(17,268.)

# SUPREME COURT OF THE UNITED STATES.

## OCTOBER TERM, 1899.

No. 192.

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THE STEAMSHIP "BENITO ESTENGER," ARTHUR ELLIOT BEATTIE, CLAIMANT, APPELLANT,

*vs.*

THE UNITED STATES.

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APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF FLORIDA.

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1 In the District Court of the United States, Southern District of Florida.

UNITED STATES OF AMERICA
*vs.*
STR. "BENITO ESTENGER." } Prize.

To the Honorable James W. Locke, judge of the district court of the United States for the southern district of Florida:

The libel of Joseph N. Stripling, attorney of the United States for the southern district of Florida, who libels for the United States and for all parties in interest against the Str. "Benito Estenger," her tackle, apparel, furniture, and cargo, in a cause of prize, alleges:

That, pursuant to instructions from the President of the United States, Lt. J. M. Holm, of the United States Navy, in and with the United States ship-of-war the Hornet, her officers and crew, did on the 27th day of June, in the year of our Lord one thousand eight hundred and ninety-eight, subdue, seize, and capture on the high seas, as prize of war, the said Str. "Benito Estenger," with a valuable cargo on board of the same, and that the said ship and cargo have been brought into the port and harbor of Key West, in the State of Florida, where the same now are, within the jurisdiction of this court, and that the said vessel and cargo are lawful prize of war and subject to be condemned and forfeited to the United States as such.

Wherefore the said attorney prays that all persons having or claiming any interest in said vessel or cargo may, by the proper process of this court, be duly notified of the allegations and
2 prayers of this libel and cited to appear and claim the same; that the nature, amount, and value of said cargo may be determined, and that on proper proofs being taken and heard and all due proceedings being had the said steamer, together with her tackle, apparel, furniture, and cargo, may on the final hearing of this cause, by the definitive sentence and decree of this court, be condemned, forfeited, and sold as a prize of war and the proceeds distributed according to law.

J. N. STRIPLING,
*U. S. Attorney, S. D. of Florida.*

Let attachment and mo-tion issue as prayed, returnable 15th day of July, 1898, A. D., at 10.30 a. m.

Entered as of course.

E. O. LOCKE, *Clerk*,
By J. OTTO, *D'y Clerk.*

(Endorsed:) United States *vs.* Benito Estenger. Libel. Filed July 2d, 1898. E. O. Locke, clerk.

Whereupon a writ of attachment is issued to the marshal of this district, which was afterwards by him returned duly executed, and with his return thereon endorsed is on file in the clerk's office.

Also monition issued to said marshal, commanding him to cite and admonish all persons whomsoever having or pretending to have any right, title, claim, or interest in or to said vessel and cargo to be before said court on July 15th, 1898, to answer said libel and show cause, if any there be, why decree should not be entered as prayed.

Which monition was by him afterward returned duly executed, and with his return thereon endorsed is on file in the clerk's office.



*Standing Interrogatories*

Established by the district court of the United States for the southern district of Florida to be administered in prize causes in said court to all persons who may be produced as witnesses to be examined *in preparatorio.*

1st interrogate. What is your name, where were you born, and where have you lived for the last seven years? Where do you now live, and how long have you lived in that place? To what prince or State, or to whom are you, or have you ever been, a subject? Are you a married man, and if married, where do your wife and family reside?

2d interrogate. Were you present at the time of taking and seizing the ship, or her lading, or any of the goods or merchandises concerning which you are now examined? Had the ship concerning which you are now examined any commission; what, and from whom?

3d interrogate. In what place, latitude or part, and when, was the said ship and goods concerning which you are now examined, taken and seized? Upon what pretence, and for what reasons were they seized? Into what port were they carried, and under what colors did the said ship sail? What other colors had you on board, and for what reason had you such other colors? Was any resistance made, at the time when the said ship was taken? and if yea, how many guns were fired? and by whom? and by what ship or ships were you taken? Was the ship or vessel by which you were captured, a ship of war, or a vessel acting without any commission, as you believe? Were any other and what ships in sight, at the time of the capture?

4th interrogate. What is the name of the master or commander of the ship or vessel taken? How long have you known the said master, and who appointed him to the command of said vessel? Where did said commander take possession of her, at what time, and what was the name of the person who delivered the possession to the said master? Where doth he live? Where is the said master's fixed place of abode, and where doth he generally reside? How long has he lived there, where was he born, and of whom is he now a subject? Is he married? If yea, where does his wife and family reside?

5th interrogate. Of what burden is the vessel which has been taken? What was the number of her mariners, and of what country were the said seamen and mariners? Did they all come on board at the same port, or at different ports, and who shipped or hired them, and when and where?

6th interrogate. Had you, or any of the officers or mariners belonging to the ship or vessel, concerning which you are now examined, any, and what, part, share or interest in the said vessel or her lading? If yea, set forth who and what goods or interest you or they have? Did you belong to the said vessel, at the time she was seized and taken? In what capacity did you belong to her? How long have you known her? When and where did you first see her, and where was she built?

7th interrogate. What is the name of the vessel? How long has she been so called? Do you know of any other name or names, and what are they, by which she has heretofore been called. Had she any passport or sea chart on board, and from whom? To what ports and places did she sail, during her said voyage, before she was taken? Where did her last voyage begin, and where was the said voyage to have ended? From what port, and at what time, particularly from the last clearing port, did the said ship sail, previously to the capture? Set forth all the ports to which she has sailed, and at which she has touched and traded, during her whole voyage, out and home.

8th interrogate. What lading did the said vessel carry, at the time of her first setting sail on her last voyage, and what sort of lading and goods had she on board, at the time she was taken? When was the same put on board? Set forth the different species of lading, and the quantity of each sort. Has any part of the cargo of said vessel been unladen, since the commencement of her original voyage? If so, at what ports or places was it unladen? State the articles which were unladen.

9th interrogate. Who were the owners of the vessel, at the time when she was seized? How do you know that they were owners at that time? Of what nation or country are such owners by birth? Where do they reside, and where do their wives and *and* families reside? How long have they resided there? Where did they reside before, to the best of your knowledge? To whom are they subject? How long have the present owners been in possession? and of whom did they purchase?

10th interrogate. Was any bill of sale made, and by whom, to the aforesaid owners of said vessel? and if any such were made, in what month and year, and where, and in the presence of what witnesses? Was any, and what, engagement entered into concerning the purchase, further than appears on the bill of sale? If yea, was it verbal or in writing? Where did you last see it, and what has become of it?

11th interrogate. Was the said lading put on board at one port and at one time, or at several ports and at several times, and at what ports, by name? Set forth what quantities of each sort of goods were shipped at each port.

12th interrogate. What are the names of the respective laders or owners, or consignees of said goods? What countrymen are they? Where do they now live and carry on their business? How long have they resided there? Where did they reside before, to the best of your knowledge? And where were the said goods to be delivered, and for whose real account, risk or benefit? Have any one of the said consignees or shippers, any and what interest in the said goods? If yea, whereon do you found your belief that they have such interest? Do you verily believe, that at the time of the lading the cargo and at the present time, and also if said goods shall be restored and unladen at the destined port, the goods did, do, and will belong to the same persons, and to none others?

4 13th interrogate. How many bills of lading were signed for the goods seized on board the said ship? Were any of those bills of lading false or colorable, or were any bills of lading signed, which were different in any respect from those which were on board the ship, at the time she was taken? What were the contents of such other bills of lading, and what became of them?

14th interrogate. Are there in the United States of America any bills of lading invoices, letters or instruments relative to the ship and goods, concerning which you are now examined? If yea, set forth where they are, and in whose possession, and what is the purport thereof, and when they were brought or sent to the United States.

15th interrogate. Was there any charter-party signed for the voyage, in which the ship, concerning which you are now examined, was seized and taken? What became thereof? When, where, and between whom, was such charter-party made? What were the contents of it?

16th interrogate. What papers, bills of lading, letters or other writings, were on board the ship, at the time she took her departure from the last clearing port, before her being taken as prize? Were any of them burnt, torn, thrown overboard, destroyed or cancelled, or attempted to be concealed, and when, and by whom, and who was then present?

17th interrogate. Has the ship, concerning which you are now examined, been, at any time, and when, seized as a prize, and condemned as such? If yea, set forth into what port she was carried, and by whom, and by what authority, or on what account she was condemned?

18th interrogate. Have you sustained any loss by the seizing and taking the ship, concerning which you are now examined? If yea, in what manner do you compute such your loss? Have you already received any indemnity, satisfaction or promise of satisfaction, for any part of the damage which you have sustained, or may sustain, by this capture and detention, and when, and from whom?

19th interrogate. Is the said ship, or goods, or any, and what part, insured? If yea, for what voyage is such insurance made, and at what premium, and when, and by what persons, and in what country was such insurance made?

20th interrogate. In case you had arrived at your destined port,

would your cargo, or any part thereof, on being unladen, have immediately become the property of the consignees, or any other person, and whom? Or was the lader to take the chance of the market for the sale of his goods?

21st interrogate. Let each witness be interrogated of the growth, produce, and manufacture of what country and place was the lading of the ship or vessel, concerning which you are now examined, or any part thereof.

22d interrogate. Whether all the said cargo, or any, and what part thereof, was taken from the shore or quay, or removed or transhipped from one boat, barque, vessel or ship, to another? From what, and to what shore, quay, boat, barque, vessel or ship, and when and where, was the same so done?

23d interrogate. Are there, in any other country, and where, or on board any and what ship or ships, vessel or vessels, other than the ship and vessel concerning which you are now examined, any bills of lading, invoices, letters, instruments, papers or documents, relative to the said ship, or vessel and cargo, and of what nature are such bills of lading, invoices, letters, instruments, papers or documents, and what are the contents? In whose possession are they, and do they differ from any of the papers on board, and in what particular do they differ?

24th interrogate. Were any papers delivered out of the said ship or vessel, and carried away in any manner whatsoever? And when, and by whom, and to whom, and in whose custody, possession or power, do you believe the same now are?

25th interrogate. Was bulk broken during the voyage in which you were taken, or since the capture of the said ship? And when, and where, by whom, and by whose orders, and for what purpose, and in what manner?

26th interrogate. Were any passengers on board the aforesaid ship? Were any of them secreted, at the time of the capture? Who were the passengers, by name? Of what nation, rank, profession or occupation? Had they any commission? for what purpose, and from whom? From what place were they taken on board, and when? To what place were they finally destined, and upon what business? Had any, and which of the passengers, any, and what property or concern, or authority, directly or indirectly, regarding the ship and cargo? Were there any officers, soldiers or mariners secreted on board and for what reason were they secreted? Were any of the citizens of the United States on board, or secreted or confined, at the time of the capture? How long, and why?

27th interrogate. Were, and are, all the passports, sea briefs, charter-parties, bills of sale, invoices and papers, which were found on board, entirely true and fair? Or are any of them false or colorable? Do you know of any matter or circumstances to affect their credit? By whom were the passports or sea briefs obtained, and from whom? Were they obtained for this ship only? And upon the oath, or affirmation, of the persons therein described, or were they delivered to, or on behalf of the person or persons who appear to have been sworn, or to have affirmed thereto, without their hav-

ing ever, in fact, made any such oath or affirmation? How long time were they to last? Was any duty or fee payable, and paid, for the same? And is there any duty or fee to be paid on the renewal thereof? Have such passports been renewed, and how often? And has the duty or fee been paid for such renewal? Was the ship in a port in the country where the passports and sea briefs were granted? and if not, where was the ship at the time? Had any person on board any let-pass, or letters of safe-conduct? If yea, from whom and for what business? Had the said ship any license or passport from any foreign power or authority during the voyage? if so, state from whom — been obtained, and for what purpose and use.

28th interrogate. Have you written or signed any letters or papers concerning the ship and her cargo, other than those found on board and delivered to the captors? If yea, what was their purport, to whom were they written and sent, and what is become of them?

29th interrogate. Towards what port or place was the ship steering her course, at the time of her being first pursued and taken? Was her course altered, upon the appearance of the vessel by which she was taken? Was her course, at all times, when the weather would permit, directed to the place or port for which she appears to have been destined by the ship's papers? Was the ship, before or at the time of her capture, sailing beyond, or wide of the said place or port to which she was so destined by the said ship's papers? At what distance was she therefrom? Was her course altered, at any, and what time, and to what other port or place, and for what reason?

30th interrogate. By whom, and to whom, hath the said ship been sold or transferred, and how often? At what time, and at what place, and for what sum or consideration, hath such sum or consideration been paid or satisfied? Was the sum paid, or to be paid, a fair and true equivalent? Or what security or securities have been given for the payment of the same, and by whom, and where do they live now? Do you know, or believe, in your conscience, such sale or transfer has been truly made, and not for the purposes of covering or concealing the real property? Do you verily believe, that if the ship should be restored, she will belong to the persons now asserted to be the owners, and to none others?

31st interrogate. What guns were mounted on board the ship, and what arms and ammunition were belonging to her? Why was she so armed? Were there on board any other, and what, arms and ammunition, and when and where — they put on board? and by whom, or by what authority, or for what purpose or destination, and on whose account were they put on board?

32d interrogate. What is the whole which you know or believe, according to the best of your knowledge and belief, regarding the real and true property and destination of the *the* ship and cargo, concerning which you are now examined at the time of the capture?

6 In the District Court of the United States in and for the Southern District of Florida. In Admiralty.

THE UNITED STATES OF AMERICA
*vs.*
THE SPANISH VESSEL BONITO ESTENGER. } Prize.

Deposition of Baldemero Perez, a witness produced, sworn, and examined *in preparatorio* on the sixteenth day of July, in the year 1898, at the U. S. court-house, Key West, Florida, in said district, on the standing interrogatories established by the district court of the United States for the southern district of Florida, the said witness having been produced for the purpose of such examination in behalf of the captors of a certain ship or vessel called the Bonito Estenger.

1. To the first interrogatory deponent answers:

My name is Baldemero Perez; I was born in the province of Santanden, Spain. For the last seven years I have lived at Manzanillo, Cuba. I am a subject of the Spanish government; am married and my wife and family live at Manzanillo.

2. To the second interrogatory deponent answers:

I was on board the ship concerning which I am now examined at the time of her capture. The ship only had the clearance papers showing she was going to Jamaica.

3. To the third interrogatory deponent answers:

7 The ship was captured about three miles north of Cape Cruz, Cuba, on 27th June, 1898. There was no reason given as to why we were seized. We were brought into Key West and were sailing under the English flag. We had the English flag, but when the ship was sold the Spanish flag was left on board. There was also a Cuban flag on board, the property of Mr. Mesa. There was no resistance whatever on our part at the time the ship was captured. One shot was fired by an American war vessel. I don't know the name of the vessel by which we were captured; she was an American war vessel. There were no other ships in sight at the time of our capture.

4. To the fourth interrogatory deponent answers:

I am the master of the vessel. Mr. Enrique Mesa appointed me master before the ship was sold. I took possession of her on the 2nd or 3rd of June, at Manzanillo. Possession was given me by Mr. Mesa. Mr. Mesa lives at Santiago de Cuba.

5. To the fifth interrogatory deponent answers:

The vessel is about 260 tons burden. The crew numbered twenty-four; four were Spaniards, one from the Phillipines, and the rest Cubans. They all came on board at Santiago de Cuba. The captain in command of the ship before me hired them. They were all on board when I took command of the vessel. One was hired by me at Jamaica.

6. To the sixth interrogatory deponent answers:

None of the officers or crew belonging to the ship had any interest

in her. I belong to the vessel in the capacity of master. I have known the vessel for over 15 years. I first saw her in Cuba. She was built in Philadelphia.

8 7. To the seventh interrogatory deponent answers:

Her name is the Bonito Estenger. She has been called so ever since I have known her. I know of no other names that she had. She had no passport or charter-party. The only documents were those given us at Jamaica. They were in the English language, and I do not know what they were. Before being taken the ship sailed to Montego bay. Previous to her capture the last port she left was Manzanillo, at 2 a. m., June 27th. She stopped at no port before capture after she left Manzanillo.

8. To the eighth interrogatory deponent answers:

Sailing from Kingston, the vessel carried a cargo of flour and Indian meal. She had no cargo on board at the time of capture.

9. To the ninth interrogatory deponent answers:

A. Beattie was the owner of the vessel at the time of her capture. He came on board at Kingston and was known as the owner of the vessel. I think he is English nationality. He lives at Manzanillo with his brothers. I think he is a single man. He has resided there about ten years. Before that time, to the best of my knowledge, he resided in England. He was an English subject; has been in possession of the vessel from the 4th or 6th of June. The ship belonged to Gallayo, Mesa & Co.

—. To the tenth interrogatory deponent answers:

A bill of sale was given by Mr. Enrique Mesa. It was given at Kingston, about the 10th of June. I do not know in whose presence. I do not know of anything other than the bill of sale. I have seen the bill of sale on board the vessel. I think it was taken with the other papers of the ship.

9 11. To the eleventh interrogatory deponent answers:

There was no cargo on board.

12. To the twelfth interrogatory deponent answers:

No cargo on board.

13. To the thirteenth interrogatory deponent answers:

No cargo on board.

14. To the fourteenth interrogatory deponent answers:

No cargo on board.

15. To the fifteenth interrogatory deponent answers:

I do not know of any charter-party.

16. To the sixteenth interrogatory deponent answers:

I do not know of any papers. All the papers were in charge of the purser. There were no papers burned, torn, destroyed, or thrown overboard.

17. To the seventeenth interrogatory deponent answers:

The vessel has never been seized as a prize and condemned as such.

18. To the eighteenth interrogatory deponent answers:

I have not sustained any loss in the capture of the ship, nor have I received any indemnity, satisfaction, or promise of satisfaction for the damage sustained.

19. To the nineteenth interrogatory deponent answers:
The ship is not insured.
20. To the twentieth interrogatory deponent answers:
No cargo on board.
21. To the twenty-first interrogatory deponent answers:
No cargo on board.
22. To the twenty-second interrogatory deponent answers:
No cargo on board.
10 23. To the twenty-third interrogatory deponent answers:
I do not know of any other papers except those on board.
24. To the twenty-fourth interrogatory deponent answers:
I have not seen any papers taken away except those delivered to the prize master. I believe them to be in the possession of the prize court.
25. To the twenty-fifth interrogatory deponent answers:
There was no cargo on board.
26. To the twenty-sixth interrogatory deponent answers:
There was only one passenger and a servant of Mr. Mesa on board. None were secreted. I do not know the name of the servant. The captain was a Spaniard. He had no commission, and was taken on board at Manzanillo. He was going from Manzanillo to Kingston, and from there to Europe. I do not know on what business. I have no interest, directly or indirectly, concerning the ship. There were no officers, soldiers, or mariners secreted on board. There were no citizens of the United States on board.
27. To the twenty-seventh interrogatory deponent answers:
All the papers that were found on board were true and fair. I know of no circumstance to affect their credit. I do not know whether any person on board had a passport or letters of safe conduct. The only paper was the English register.
28. To the twenty-eighth interrogatory deponent answers:
I have written or signed no letters or papers concerning the ship other than those found on board and delivered.
11 29. To the twenty-ninth interrogatory deponent answers:
At the time we were captured we were steering toward Montego bay. Her course was not altered upon the appearance of the vessel by which we were captured. When the weather would permit, her course was always toward the destination shown by the ship's papers.
30. To the thirtieth interrogatory deponent answers:
She was only sold at one time, and I do not know for what sum of money. I think it was a legal sale. I believe if the ship were restored she would belong to her present owner and no other.
31. To the thirty-first interrogatory deponent answers:
There were no guns, arms, or ammunition on board.
32. To the thirty-second interrogatory deponent answers:
I have stated all that I know. BALDEMERO PEREZ.

Sworn to and subscribed before me this 21st day of July, 1898.
JULIUS OTTO,
*Prize Commissioner.*

12 In the District Court of the United States in and for the Southern District of Florida. In Admiralty.

THE UNITED STATES OF AMERICA
*vs.*
THE SPANISH VESSEL "BONITO ESTENGER." } Prize.

Deposition of Edwin Cole, a witness produced, sworn, and examined in *preparatorio*, on the sixteenth day of July, in the year 1898, at the U. S. court-house, Key West, Florida, in said district, on the standing interrogatories established by the district court of the United States for the southern district of Florida, the said witness having been produced for the purpose of such examination in behalf of the captors of a certain ship or vessel called the Bonito Estenger.

1. To the first interrogatory deponent answers:

My name is Edwin Cole. I was born in England, and for the past seven years have lived in Kingston, Jamaica. I have lived there for 15 years; am an English subject. I am a widower.

2. To the second interrogatory deponent answers:

I was present at the time of the seizing of the vessel. She had a British register.

3. To the third interrogatory deponent answers:

The ship was about a mile and a half northwest of Cape Cruz light-house at the time of her capture. She was captured on the morning of the 27th of June, this year. I did not hear of
13 any reason offered for our capture. We were sailing under British colors and were bound for Montego bay. We were brought to the port of Key West. I saw no other flags on board. No resistance whatever was made. We were captured by the United States war vessel the Hornet. There was no other vessel in sight.

4. To the fourth interrogatory deponent answers:

The master of the vessel was named Baldemero Perez. I have known him since the 22nd of June, 1898. I cannot say who appointed him commander; he was there when I came on board the ship. I do not know what time or where he took command, and do not know who placed him in command. From hearsay I think he lives in Santiago. I do not know how long he has lived there or where he was born. He was a Cuban. He is a married man, with a family, so he says. His family lives in Santiago.

5. To the fifth interrogatory deponent answers:

The vessel was of 224 tons register. There were 24 in the crew, including myself. They are all Cubans, and all came on board at Santiago. I cannot say who hired them. They all signed fresh articles, British articles, in Kingston.

6. To the sixth interrogatory deponent answers:

I had no interest in the vessel. I do not know whether or not any of the others had. She had no cargo on board at the time she was captured. I was master of the vessel. I have known the vessel since the 21st of June, 1898. I first saw her in Kingston harbor,

which was about a week before I joined her. I saw her lying
14 there at the wharf about the 14th or 15th of June. She was built in the United States.

7. To the seventh interrogatory deponent answers:

The name of the vessel was the Bonito Estenger. I cannot say how long she was so called, and do not know whether she was ever called by any other name. Before I joined her I hear she had been sailing around the island of Cuba. We called at no other port until we arrived at Manzanillo. The voyage began in Kingston and was to have ended in Kingston.

8. To the eighth interrogatory deponent answers:

There was no cargo on board at the time we were captured.

9. To the ninth interrogatory deponent answers:

Alexander Beattie, a native of Glasgow, was the owner of the vessel, from what I have heard, and his name appears on the register. I cannot say where he resides, and do not know whether he has a wife and family or not. I do not know how long he has been owner of the vessel; do not know from whom he purchased her.

10. To the tenth interrogatory deponent answers:

I do not know whether there was any bill of sale made or not.

11. To the eleventh interrogatory deponent answers:

The ship had no cargo at the time she was captured.

12. To the twelfth interrogatory deponent answers:

Ship had no cargo on board.

13. To the thirteenth interrogatory deponent answers:

Ship had no cargo on board.

15 14. To the fourteenth interrogatory deponent answers:

Ship had no cargo and no bill of lading.

15. To the fifteenth interrogatory deponent answers:

There was no charter-party signed for the voyage that I know of.

16. To the sixteenth interrogatory deponent answers:

At the time of her departure from last clearing port she had the British register, ship's articles and agreement, clearance—custom-house—clean bill of health, and log book.

17. To the seventeenth interrogatory deponent answers:

The ship has never been seized and condemned as a price that I know of.

18. To the eighteenth interrogatory deponent answers:

I have sustained no loss through the seizing of the vessel.

19. To the nineteenth interrogatory deponent answers:

The ship is not insured.

20. To the twentieth interrogatory deponent answers:

Ship had no cargo on board.

21. To the twenty-first interrogatory deponent answers:

Ship had no cargo.

22. To the twenty-second interrogatory deponent answers:

Ship had no cargo.

23. To the twenty-third interrogatory deponent answers:

Ship had no cargo.

24. To the twenty-fourth interrogatory deponent answers:
There were no other papers delivered out of the ship and taken away that I am aware of.

16 25. To the twenty-fifth interrogatory deponent answers:
Ship had no cargo.

26. To the twenty-sixth interrogatory deponent answers:
There were two passengers on board. I do not know their names. One was the original captain of the ship and the other was a boy taken on board as a servant. They had no occupation. The boy was a servant. They were destined to Montego bay. None of the passengers or crew had any interest in the vessel. There were no citizens of the United States on board.

27. To the twenty-seventh interrogatory deponent answers:
All the papers on board were entirely true and fair, so far as I know.

28. To the twenty-eighth interrogatory deponent answers:
I have only written two letters to my friends in Jamaica. They were private letters I wrote, protesting to the British consul, which Mr. Otto said he would deliver.

29. To the twenty-ninth interrogatory deponent answers:
At the time of our capture we were steering for Montego bay. We altered our course very little. The vessel was nearly ahead of us when we sighted her and we steered for her. We steered on a direct course from Manzanillo up to the time we were captured.

30. To the thirtieth interrogatory deponent answers:
I do not know how often the vessel has been sold or transferred. I never heard what the consideration was. If the ship were restored she would belong to Mr. Beattie and no one else.

17 31. To the thirty-first interrogatory deponent answers:
There were no guns on board except one revolver and two old machetes as curiosities.

32. To the thirty-second interrogatory deponent answers:
I have stated all I know in regard to the ship and her destination.

EDWIN COLE.

Sworn to and subscribed before me this 21st day of July, 1898.

JULIUS OTTO,
*Prize Commissioner.*

In the District Court of the United States in and for the Southern District of Florida.

THE UNITED STATES OF AMERICA
*vs.*
THE SPANISH VESSEL "BONITO ESTENGER." } Prize.

Deposition of Enrique de Mesa, a witness produced, sworn, and examined on the 16th day of July, in the year 1898, at the U. S. court-house, Key West, Florida, in said district, on the standing interrogatories established by the district court of the United States for the southern district of Florida, the said witness having been produced for the purpose of such examination in behalf of the captors of a certain ship or vessel called the Bonito Estenger.

18 1. To the first interrogatory deponent answers:

My name is Enrique de Mesa. I was born in Santiago de Cuba, and have lived for the past seven years in Santiago; have lived there all my life. I am a Spanish subject; am a single man.

2. To the second interrogatory deponent answers:

I was present at the time of the seizing of the ship Bonito Estenger. There were only the papers of the ship on board.

3. To the third interrogatory deponent answers:

The ship was captured in front of Cape Cruz, about 5 o'clock a. m., June 27th. I do not know of any pretense offered as to why we were seized. We were sailing under English colors, and were brought to Key West. The other colors on board were the port flag of Kingston and a Spanish flag we had when the ship was Spanish, and a Cuban flag that was my personal property and does not belong to the ship. There was no resistance on our part at the time of capture. We were captured by the U. S. S. Hornet. No other ships were in sight; next day a man-of-war arrived. There were none in sight at the time of our capture.

4. To the fourth interrogatory deponent answers:

The master of the ship was Baldemero Perez; have known him for several years. I appointed him master of the vessel. He was afterwards permanently appointed by Mr. Beattie. His fixed place of abode is Manzanillo. I do not know how long he has lived
19 there nor where he was born; am a Spanish subject; have lived in Cuba for many years. He is married and his family live in Manzanillo.

5. To the fifth interrogatory deponent answers:

The burden of the vessel is 246 tons. Her crew numbered twenty-four—four Spaniards and the rest Cubans, except one that we got in Kingston. The others all came on board at Santiago. They were hired by the captain that was on board before.

6. To the sixth interrogatory deponent answers:

Neither the crew nor myself have any interest in the ship. I was there at the time the vessel was seized in the capacity of supercargo and in charge of the vessel by request of the owner. I have known

the ship for seventeen years. I first saw her at Santiago de Cuba. She was built in Philadelphia.

7. To the seventh interrogatory deponent answers:

The name of the vessel is the Bonito Estenger; she has been so called ever since she was built. The port from which she last sailed before being captured was Manzanillo. The voyage began at Kingston, to go to Manzanillo and to be ended at Montego. We were to load at Montego bay and go back to Manzanillo. The last port we cleared was Manzanillo, at 2 a. m., June 27th.

8. To the eighth interrogatory deponent answers:

When the vessel first set sail on her voyage she had a cargo of rice, flour, corn meal, and coffee. At the time she was seized she had no cargo on board. The cargo was loaded at Kingston, on the 22nd and 23rd, and discharged at Manzanillo.

20 9. To the ninth interrogatory deponent answers:

Mr. A. Beattie was the owner of the vessel at the time she was captured. I know he was the owner because my house sold him the ship. The owner is by birth an Englishman. He is single and resides temporarily in Kingston. I do not know how long he has lived in Kingston. He is an English subject. He has been in possession of the vessel since the first day of June, this year. He bought it from the firm of which I am a member, Gallego, Mesa & Co.

10. To the tenth interrogatory deponent answers:

There was a public bill of sale made on the first day of June, at Kingston, this year. It was made in the presence of witnesses. No other engagement was made than appears on the bill of sale. It was a public bill of sale and in writing. It is in the possession of Mr. Beattie.

11. To the eleventh interrogatory deponent answers:

There was no cargo on board.

12. To the twelfth interrogatory deponent answers:

There was no cargo on board.

13. To the thirteenth interrogatory deponent answers:

There was no cargo on board.

14. To the fourteenth interrogatory deponent answers:

There was no cargo on board.

15. To the fifteenth interrogatory deponent answers:

There was no charter-party signed for the voyage on which the ship was seized and taken.

16. The only documents on board at the time of her clearance from last port before being taken were those given to the

21 prize master. There were no papers on board burned, thrown overboard, or destroyed. It was the first trip of the ship with Mr. Beattie, and she had no papers on board.

17. To the seventeenth interrogatory deponent answers:

The ship has never been seized and condemned as a prize.

18. To the eighteenth interrogatory deponent answers:

The only thing I lost is the time I have to spend here.

19. To the nineteenth interrogatory deponent answers:

The ship was not insured.

20. To the twentieth interrogatory deponent answers:
No cargo.
21. To the twenty-first interrogatory deponent answers:
No cargo.
22. To the twenty-second interrogatory deponent answers:
No cargo on board.
23. To the twenty-third interrogatory deponent answers:
I do not know of any other papers in the United States or other country except the bills of lading and copies of bills of lading we took in Kingston.
24. To the twenty-fourth interrogatory deponent answers:
There were no other papers carried away from the ship except those taken by the prize master.
25. To the twenty-fifth interrogatory deponent answers:
There was no cargo on board at the time of capture.
26. To the twenty-sixth interrogatory deponent answers:
There were only two passengers on board, the old captain,
22 Genero Basaron, and the servant boy, Moresto Moreno. There were about sixty passengers to come over, but the Spanish authorities would not allow them to leave. The old captain was a Spaniard, and servant was from Manzanillo and was a Cuban. They were taken on board at Manzanillo. They were going to Montego bay, and from there to Kingston, and the old man was going from there to Europe.
27. To the twenty-seventh interrogatory deponent answers:
All the papers found on board were entirely true and fair.
28. To the twenty-eighth interrogatory deponent answers:
I have written a letter to Mr. Beattie announcing the situation we were in.
29. To the twenty-ninth interrogatory deponent answers:
At the time of being captured the vessel was steering her course for Montego bay. Her course was not altered from the course her papers showed her to be taking. When the weather would permit, her course was at all times towards the point for which she appears to have been destined from her papers.
30. To the thirtieth interrogatory deponent answers:
This is the first time the ship has been sold, and that was for the reason that the situation was so grave the family were compelled to sell it to get money to live on. She was sold at Kingston for $40,000, which sum has already been paid. If the ship would be restored she would belong to Mr. Beattie.
31. To the thirty-first interrogatory deponent answers:
There were no guns, arms, or ammunition on board at the time of our capture.
23 32. To the thirty-second interrogatory deponent answers:
I have told the whole of what I know to the best of my knowledge.

ENRIQUE DE MESSA.

Sworn to and subscribed before me this 21st day of July, 1898.

JULIUS OTTO,
*Prize Commissioner.*

In the District Court of the United States in and for the Southern District of Florida.

THE UNITED STATES OF AMERICA
*vs.*
THE SPANISH VESSEL BONITO ESTENGER. } Prize.

Deposition of Jose Vivanco Perez, a witness produced, sworn, and examined *in preparatorio* on the sixteenth day of July, in the year 1898, at the U. S. court-house, Key West, Fla., in said district, on the standing interrogatories established by the district court of the United States for the southern — Florida, the said witness having been produced for the purpose of such examination in behalf of the captors of a certain ship or vessel called the Bonito Estenger.

1. To the first interrogatory deponent answers:

24 My name is Jose Vivanco Perez; born at Santiago de Cuba. I now live at Santiago de Cuba and have lived there all my life, thirty-two years. I am a Cuban. I was compelled to be a Spanish subject, but I've always been a Cuban. I am a married man, and my wife and family reside at Santiago de Cuba.

2. To the second interrogatory deponent answers:

I was present at the time of the taking and seizing of said ship. The only paper- on board were the clearance documents of the ship from Kingston, given to the prize master by the captain.

3. To the third interrogatory deponent answers:

The ship was captured in front of Cape Cruz, June 27th, 1898. She was brought into Key West and was sailing under the English flag. The port flag of Kingston and the quarantine flag is all the colors I know of that we had on board. There was a Spanish flag on board before she was sold, but it was taken down. There was no resistance made at the time of the capture of said ship. No guns were fired by us, but guns were fired by the ship that captured us. The ship that captured us was the United States — Hornet. There was no other ship in sight.

4. To the fourth interrogatory deponent answers:

The name of the master of the ship is Baldemero Perez. I have known the captain very long; do not know who appointed him, but think Mr. Mesa was the one who appointed him. The captain took possession of her at Manzanillo; do not recollect the day or hour, but it was in the month of June. Mr. Mesa lives at Santiago de Cuba. The captain lives at Manzanillo. I do not know how long he has lived there nor where he was born; he was a

25 Spanish subject; he is a married man and his wife and family reside at Manzanillo.

5. To the fifth interrogatory deponent answers:

The ship captured is of 244 tons register. There were twenty-four men on board of her—one from Manzanillo, four Spaniards who had lived forty years in Cuba, one American citizen, one Englishman, and the rest Cubans. Several of them had been taken at

different ports. Generally the captain hires the men. Some of them had been on board over twelve years.

6. To the sixth interrogatory deponent answers:

Neither myself nor any of the officers nor any of the sailors have any interest in the ship. I belong to the said vessel at the time she was seized in the capacity of purser. I have known the vessel for many years. She was built at Philadelphia, and I saw her at Santiago de Cuba for the first time.

7. To the seventh interrogatory deponent answers:

The name of the vessel is the Bonito Estenger, and she has been so called for many years; she has never been called by any other name. She had an English register and other papers from the custom-house. She sailed through Manzanillo before she was taken. The last voyage begun at Kingston and was to have ended at Montego bay. The last port she sailed from previous to capture was Manzanillo, between two and three o'clock a. m., June 27th.

8. To the eighth interrogatory deponent answers:

The ship carried a cargo of general provisions. There was no cargo on board at the time she was captured.

26 9. To the ninth interrogatory deponent answers:

The owner of the vessel at the time she was captured was Artura Beattie. I know he was the owner, because when he came on board he was introduced as the owner, and he gave orders. Mr. Beattie was an Englishman. He resides at Kingston and is a single man. I do not know how long he has resided there. I do not know where he resided before. The present owner has been in possession from between the 10th and 14th of June, and the ship was bought from the firm of Galao, Mesa & Company.

10. To the tenth interrogatory deponent answers:

I was not informed anything about any bill of sale and do not know of any engagement entered into concerning the purchase.

11. To the eleventh interrogatory deponent answers:

No cargo on board.

12. To the twelfth interrogatory deponent answers:

No cargo on board.

13. To the thirteenth interrogatory deponent answers:

No cargo on board and no bills of lading signed.

14. To the fourteenth interrogatory deponent answers:

No bills of lading.

15. To the fifteenth interrogatory deponent answers:

The ship had no charter-party at the time she was seized.

16. To the sixteenth interrogatory deponent answers:

The papers that were on board at the time the ship was seized were clearance papers, register, passenger list, bill of health, and all the papers that were customarily on the ship. There were

27 no papers burnt, torn, thrown overboard, or destroyed.

17. To the seventeenth interrogatory deponent answers:

The ship has at no time been seized as a prize and condemned as such.

18. To the eighteenth interrogatory deponent answers:

I sustained no loss in the taking of the ship and received no indemnity or promise of indemnity.

19. To the nineteenth interrogatory deponent answers:

I do not know whether or not the ship was insured.

20. To the twentieth interrogatory deponent answers:

No cargo on board.

21. To the twenty-first interrogatory deponent answers:

No cargo on board.

22. To the twenty-second interrogatory deponent answers:

No cargo on board.

23. To the twenty-third interrogatory deponent answers:

I do not know of any bills of lading, invoices, letters, instruments, papers, or documents relative to the ship in any other country.

24. To the twenty-fourth interrogatory deponent answers:

I have not seen anybody take any papers away except those deivered to the prize master. I do not know where they are now.

25. To the twenty-fifth interrogatory deponent answers:

No cargo on board.

26. — twenty-sixth interrogatory deponent answers:

There were two passengers on board the ship. They were not secreted. Their names were Genero Passaron. The other
28 passenger was called Manuel, but I do not know his name. One is a Spaniard, the other is from Manzanillo and is a servant. I do not know whether they had any commission or not. They were taken on board at Manzanillo the day we started. The captain was going to Jamaica and from there to Spain. The other was going to Jamaica. He was going as a servant to the house of the sister of Mr. Nesa. None of the passengers were interested in the vessel except as passengers. There were no officers, soldiers, or mariners secreted on board the vessel. There was one American sailor on board. He was not secreted or confined at the time of the capture.

27. To the twenty-seventh interrogatory deponent answers:

I think all the papers found on board were entirely true and fair. I know of nothing to affect their credit. I do not know whether or not any person on board had any pass or letter of safe conduct. The ship had no license or passport other than papers of the ship given to the prize master.

28. To the twenty-eighth interrogatory deponent answers:

I have written or signed no letters or papers concerning the ship except those found on board and delivered to the captain.

29. To the twenty-ninth interrogatory deponent answers:

The ship at the time of being pursued and taken was steering towards Montego bay. Our course at all times when the weather would permit was towards Montego bay.

30. To the thirtieth interrogatory deponent answers:

The ship had only been transferred between the 10th and 14th of June at Kingston. I do not know what sum of money or consideration was given. I do not know whether it has been paid
29 or not. When Mr. Mesa was going to Kingston he told me he had sold the ship for the support of his family. I believe

it was a legal sale. I verily believe if the ship should be restored she would belong to the person now asserted to be her owner and no one else.

31. To the thirty-first interrogatory deponent answers:

There were no guns, arms, or ammunition on board.

32. To the thirty-second interrogatory deponent answers:

I do not know anything else. I have told all that I know about it.

JOSE G. VINANCIO PEREZ.

Sworn to and subscribed before me this 21st day of July, A. D. 1898.

JULIUS OTTO,
*Prize Commissioner.*

(Endorsed:) United States *vs.* The Bonito Estenger. Testimony *in preparatorio.* Filed July 21st, 1898. E. O. Locke, clerk.

30 District Court of the United States, Southern District of Florida. In Admiralty.

UNITED STATES OF AMERICA
*vs.*
BRITISH STEAMER "BENITO ESTENGER." } Prize.

*Claim.*

And now comes Baldemero Perez and says that he is the master of the said steamer Benito Estenger and as such is the lawful bailee of the said ship, her tackle, apparel, and machinery, and he claims the same for the respective owners thereof.

And he further says that Arthur E. Beattie, a British subject, residing in England, is the true and *bona fide* owner of the said steamer, and that no other person is the owner thereof, as appears by the register of said steamer, and, as he is informed and believes, the British register of the said steamer is now in the possession of this honorable court, and he prays reference to the same for proof herein.

He further says that the said steamer at the time of capture belonged to the person hereinbefore named and referred to, as he is informed and believes, and that the same, if restored, would belong to the same person & none other, as he has reason to and does believe, and he denies the same is lawful prize of war, and he prays restitution thereof.

BALDOMERO PEREZ.

Sworn to and subscribed before me this 27th day of July, A. D. 1898.

J. OTTO,
*Deputy Clerk.*

G. BOWNE PATTERSON, *Proctor.*

(Endorsed:) United States *vs.* Str. Benito Estenger. Claim of B. Perez, master. Filed July 28, '98. E. O. Lock*r*, clerk.

31 District Court of the United States, Southern District of Florida. In Admiralty.

THE UNITED STATES OF AMERICA
*vs.*
BRITISH STEAMER "BENITO ESTENGER." } Prize.

*Test Affidavit.*

Baldomero Perez, being duly sworn, says that he was born in Spain, but is now a resident of Cuba & has lived in Cuba since he was a child; that he married there, and his family lives in Manzanillo; that he is a sympathizer of the Cuban insurgents, and that he has family connections in the insurgent army in Cuba; that he is master of the said steamer Benito Estenger, and that he was appointed master on or about the 2nd day of June, A. D. 1898, by Enrique Mesa, then the owner of the said steamer, the captain preceding him having taken sick.

About the 4th or 5th of June said steamer left Manzanillo for Kingston, Jamaica, Mr. Enrique Mesa, the owner, being on board, and said steamer arrived at Kingston about the 7th of June; that while the said vessel was in Jamaica she was sold by Enrique Mesa to Arthur E. Beattie, who is a British subject. He knows she was sold to Mr. Beattie because he came on board and informed him that he could remain as master, but it would be necessary for him to put an English subject on board as first officer or second
32 captain, in conformity with the British law; that on the 23rd of June, 1898, the steamer left Kingston, Jamaica, for Manzanillo with a cargo of provisions consigned to order of Beattie & Co., Mr. Enrique Mesa, supercargo; that on the morning of the 27th of June, at 2 o'clock, the said steamer again came out of the port of Manzanillo, Mr. Enrique Mesa being on board, bound for Kingston, Jamaica, but deponent was informed by Enrique Mesa that he would communicate with Admiral Sampson at Santiago, if possible; that at about 5.30 a. m. of same day the said steamer was stopped by the U. S. S. "Hornet," and an officer and several armed men placed on board the said Benito Estenger, taking possession of her, upon which deponent heard Enrique Mesa request the officer several times to take the steamer to Admiral Sampson, and after holding the vessel for some time and considering the matter for quite a while the officer said that his orders *was* to take all vessels captured to the port of Key West, and that the said steamer was brought to Key West and libeled as prize of war. Deponent says that at the time the said steamer came out of the port of Manzanillo and at the time of her capture the proclamation of the President of the United States extending the blockade from Cape Cruz to Cape Frances had not been issued, and therefore said vessel was not liable to capture. He further says that by the terms of the proclamation of the President of the U. S., dated 27th day of June, 1898, all neutral vessels in Cuban ports on the south side of Cuba were allowed 30 days to depart from said date.

BALDOMERO PEREZ.

Sworn to and subscribed before me this 27th day of July, A. D. 1898.

J. OTTO,
*Deputy Clerk.*

(Endorsed:) United States *vs.* Str. Benito Estenger. Test affidavit. B. Perez, master. Filed July 28th, 1898. E. O. Locke, clerk.

33 District Court of the United States, Southern District of Florida. In Admiralty.

UNITED STATES OF AMERICA
*vs.*
BRITISH STEAMER "BENITO ESTENGER." } Prize.

*Test Affidavit.*

Enrique Mesa, being duly sworn, says that he is a native-born Cuban, having been born in Santiago, Cuba, which has been his residence during his life; that at the time of the capture of the said steamer he was on board of her as the representative of her owner, who is Arthur E. Beattie, a British subject, resident of England and a member of the British firm of Beattie & Co., operators of sugar estates in and about Manzanillo, Cuba; that the said steamer was built in Philadelphia and owned by Gallego, Mesa & Co., all natives and residents of Cuba, doing business in Santiago, Cuba, and the said steamer was afterwards owned by this deponent, who was a member of said firm; that the said vessel up to about April 4th, 1898, had been running coastwise and under the Spanish flag; that about that time deponent came from Europe, he being a prominent sympathizer of the Cuban cause and many of his relatives being prominently connected with the Cuban insurgents, and having lost a great deal of his property during the Cuban war and fearing that the said Benito Estenger might be seized by the Spanish government, and that he might thus lose her, on the 2nd of June he got said vessel out of Cuba and into Jamaica, where he arrived June 4th, with intention of disposing of her immediately;
34 that he placed the vessel in the hands of Mr. Orrett, an attorney and broker of Kingston, Jamaica, at the same time informing him that he thought the vessel could be sold to the firm of Beattie & Co., who he learned before leaving Cuba needed a a larger vessel than the one already owned or used by them (the Greenan Castle) for bringing supplies from Jamaica to Cuba for a large number of Cuban families living on the sugar estates of the said Beattie & Co. near Manzanillo, said families being composed principally of women and children, the male portion of which being in the army of the insurgents.

That on or about the 14th of June, 1898, Mr. Orrett, the broker aforesaid, negotiated the sale of said vessel to the said Arthur E. Beattie, of the said firm of Beattie & Co., for the sum of $40,000.00, deponent making and executing a proper bill of sale for the same, the deponent being at the said time indebted to the said firm of

Beattie & Co., a large part of which consideration of $40,000.00 was credited by the said Arthur E. Beattie on the indebtedness of him, the said deponent.

That after the sale of the said vessel to the said Arthur E. Beattie, as aforesaid, the vessel was put on the route between Jamaica and Manzanillo as a freighter and passenger vessel, temporarily, until arrangements could be made for her to run regularly from their plantations on the coast of Cuba, Manzanillo, & Jamaica, and deponent was employed by Mr. Beattie to go on said vessel as his representative and business manager.

That before the said steamer left Jamaica deponent was requested by one Dr. Caminerro, a member of the American consulate in Kingston, to visit the consulate, as the consul wished to discuss with deponent some important business, the American consul having got information by some means that deponent, some time before, had contemplated the building of docks in the harbor of Santiago, Cuba, and with that view had made or procured extensive drawings of the harbor, depths of water in various parts, and other important information which would be valuable to the American fleet, then operating in front of Santiago, consul knowing deponent to be a Cuban and an enthusiastic sympathizer for their cause.

On the 17th or 18th of June, 1898, deponent went to the office of the American consul in Kingston, Jamaica, and knowing that the said Arthur E. Beattie was a sympathizer with the Cuban cause, asked him to accompany him, which he did; that at the interview with the consul deponent informed him that he had with him in Kingston, Jamaica, the plans and soundings of the harbor of Santiago aforesaid, and on the 23rd of June he again met the consul by appointment, Mr. Beattie being with him, and being familiar with the coast around Santiago he made and submitted plans, and explained to the American consul, and marked out a place suitable for the landing of an armed force in Santiago bay, at the same time the American forces were landing at Baiquire. It was agreed between the consul and deponent, he being informed by Mr. Beattie that the steamer would sail shortly for Manzanillo and shortly return to Jamaica from there, that on her return from Manzanillo to Jamaica that deponent would go up to Santiago and meet Admiral Sampson, and the consul would in the meantime advise Admiral Sampson if possible.

That the said Benito Estenger left Kingston, Jamaica, on the 23rd of June, with deponent on board, for the port of Manzanillo, where she arrived on the 25th day of June, 1898, and had booked there about 60 refugees, passengers for Jamaica, but a few hours before the leaving of the steamer the Spanish government prohibited them from taking them.

On the morning of the 27th of June, at 2 o'clock, the said steamer came out of Manzanillo, deponent being on board of her, and it being understood by all the officers on board, who were also Cubans and sympathizers of the Cuban cause, that she would make for Sampson's fleet, where deponent would have his interview with

Admiral Sampson, in conformity with his agreement with the American consul aforesaid; that at 5.30 a. m. of same day, June 27th, when the said steamer, Benito Estenger, was off Cape Cruz, she was stopped by the U. S. "Hornet," and an officer and several men from the Hornet came on board of the Benito Estenger and took possession of her; that deponent requested that the said ship be taken to Admiral Sampson, stren-ously urging the officer to do so, but he persistently refused, saying that his orders were to take any vessels captured as prizes direct to the port of Key West; that the said steamer was brought to Key West and libeled as prize of war.

Deponent says that at the time of the seizure of the said steamer she was to all intents and purposes in the service of the United States Government; that at said time said port of Manzanillo was not a blockaded port; that she came out of Manzanillo at 2 o'clock in the morning of the 27th, and was captured at 5.30 of the same morning, and the proclamation of the President of the United States extending the blockade of southern Cuba from Cape Cruz to Cape Frances was issued on the said 27th day of June, but, as deponent has reason to believe, said proclamation was not signed and issued by the President on the said 27th day of June until after the hour his said steamer left Manzanillo and the hour of her capture.

37 Deponent further says that by the terms of said proclamation of the President all neutral vessels in Cuban ports on the said south side of Cuba were allowed 30 days to depart; that on the voyage from Jamaica to Manzanillo aforesaid the cargo of the said steamer consi-ted of provisions consigned to F. Bauriedel & Co., at Manzanillo; that at the time of the capture of the said vessel she had no cargo at all, having made arrangements to take 60 passengers, which at the last moment were prevented from leaving by the Spanish government, as aforesaid.

ENRIQUE DE MESA.

Sworn to and subscribed before me this 27th day of July, A. D. 1898.

J. OTTO,
*Deputy Clerk.*

(Endorsed:) United States *vs.* Benito Estenger. Test affidavit E. Mesa. Filed July 28th, 1898. E. O. Locke, clerk.

38 And on the 30th day of July of said year this cause comes on for hearing before said court, at Jacksonville.

Present: Hon. James W. Locke, judge, the United States being represented by the U. S. attorney and special counsel, and the claimant by H. Putnam, Esq.

And this cause is heard upon the libel, depositions taken *in preparatorio*, and test affidavits.

And the motion of the United States for condemnation is argued and submitted.

Afterwards, upon consideration of the premises, it is ordered as follows, to wit:

39 In the District Court of the United States, Southern District of Florida.

THE UNITED STATES
*against*
THE STEAMER "BENITO ESTENGER." } Prize.

This cause having come on to be heard upon the testimony taken *in preparatorio*, the papers found on board, and the claims and test affidavits filed therein, and having been fully heard and considered, and the court not being fully satisfied as to the liability of said vessel to condemnation, it is ordered that the claimants and captors both have sixty days to file further proof in behalf of said claims; and it is further ordered that such further proof be taken by commission issued out of this court, with interrogatories and cross-interrogatories to be taken before any judicial officer or consular officer or notary public duly authorized to administer oaths and take depositions.

JAMES W. LOCKE, *Judge.*

Jacksonville, Florida, July 30th, 1898.

(Endorsed:) United States *vs.* Benito Estenger. Decree. Filed Aug. 1st, 1898. E. O. Locke, clerk.

40 *Minute Book "B," U. S. District Court, Southern District of Florida.*

Special Term, U. S. District Court, So. District of Fla., Nov. 30, 1898.

Present: Hon. James W. Locke, judge.

UNITED STATES
*vs.*
"BENITO ESTENGER." } Prize.

This cause comes on for a hearing upon motion of the United States attorney for the condemnation of said vessel as prize of war. And said motion is argued and submitted.

Afterwards, upon consideration thereof, upon the 7th day of December of said year, it is ordered, adjudged, and decreed as follows, viz:

41 United States District Court, Southern District of Florida.

THE UNITED STATES
*vs.*
SPANISH STEAMER "BENITO ESTENGER." } Prize.

This cause having come on to be heard upon the libel and proofs and testimony taken *in preparatorio* and upon commissions, and all

due proceedings having been had and proclamations having been duly made in open court, and B. Perez having appeared and claimed said vessel upon the test affidavit of himself and E. Mesa, and being fully heard, and it appearing to the court that the said S. S. "Benito Estenger" is enemy's property:

Now, on motion of Joseph N. Stripling, attorney of the United States, it is ordered, adjudged, and decreed that the said S. S. "Benito Estenger" be condemned and forfeited to the United States as lawful prize of war, said claim notwithstanding.

And it is further ordered that the marshal proceed to advertise and sell said vessel and cargo, after due and proper notice, at public auction, and make return of the sale and expenses to this court and deposit the proceeds with the assistant treasurer of the United States at New York, as required by law.

JAMES W. LOCKE, *Judge.*

Jacksonville, Florida, December 7th, 1898.

(Endorsed:) United States *vs.* Benito Estenger. Decree of condemnation. Filed Dec. 7th, 1898. E. O. Locke, clerk.

42 District Court of the United States, Southern District of Florida.

THE UNITED STATES
*vs.*
THE STEAMSHIP BENITO ESTENGER. } Prize.

*Assignment of Errors.*

The claimant and appellant assigns error to the final decision and decree of the district court as follows:

1. For that the court held and decided that the Benito Estenger was lawful prize of war.

2. For that the court failed and declined to hold that the Benito Estenger was not lawful prize of war.

3. For that the court failed and declined to hold that the Benito Estenger was a neutral vessel lawfully owned and registered in the name of a British subject domiciled in Great Britain.

4. For that the court failed and declined to hold that the steamship Benito Estenger was a British merchant ship duly documented and entitled to the protection of her flag.

5. For that the court failed and declined to hold that the Benito Estenger was employed and engaged on a voyage by and on behalf of the local Cuban junta of Kingston, for whom the steamer had carried a cargo from Kingston into Manzanillo.

43 6. For that the court failed and declined to hold that said Cuban junta and its supporters were allies of the United States, and that vessels employed by them are not lawful prize of war.

7. For that the court failed and declined to hold that the Benito Estenger, when captured, was in the service of the United States,

this claimant and her supercargo having furnished maps, surveys, and other important data of Santiago harbor to Admiral Sampson and having arranged that the vessel should come to meet his fleet to furnish additional information to the Admiral.

8. For that the court condemned as enemy's property the vessel thus employed in friendly offices to the forces of the United States.

G. BOWNE PATTERSON,
HARRINGTON PUTNAM,
*Proctors for Appellant.*

(Endorsed:) United States *vs.* Benito Estenger. Assignment of errors. Filed Dec. 16th, 1898. E. O. Locke, clerk.

44 District Court of the United States, Southern District of Florida.

THE UNITED STATES
*vs.*
THE STEAMSHIP BENITO ESTENGER. } Prize.

And now comes Arthur Elliot Beattie, claimant, considering himself aggrieved by the decision and decree of condemnation herein and alleging error in said decree, and appeals therefrom to the Supreme Court of the United States. He presents herewith an assignment of the errors complained of and a bond for costs, with surety in the sum directed by the court, and thereupon prays that his said appeal may be allowed and that the record and proceedings may be duly certified to the Supreme Court of the United States, in accordance with the rules and practice for such cases made and provided, to the end that said appeal may be heard and determined by the said court.

G. BOWNE PATTERSON,
HARRINGTON PUTNAM,
*Proctors for Appellant.*

Dated December 13th, 1898.

Upon reading and filing the foregoing notice and prayer of appeal, with the assignment of errors and bond on appeal, the appeal of the claimant, Arthur Elliot Beattie, is hereby allowed.

JAMES W. LOCKE, *Judge.*

(Endorsed:) United States *vs.* "Benito Estenger." Notice and prayer of appeal. Filed Dec. 16th, 1898. E. O. Locke, clerk.

45 District Court of the United States, Southern District of Florida.

THE UNITED STATES
*vs.*
THE STEAMSHIP "BENITO ESTENGER." } Prize.

*Bond on Appeal.*

Know all men by these presents that we, Arthur Elliot Beattie, principal, and The American Surety Company of New York, surety, are held and firmly bound unto the United States of America in the sum of five hundred dollars, to be paid to the said United States of America; for which payment, well and truly to be made, we bind ourselves, our heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

Sealed with our seals and dated the 13th day of December, 1898.

Whereas lately, at a session of this court in the cause of prize pending therein wherein The United States is libellant against The Steamship Benito Estenger and said Arthur Elliot Beattie is claimant, a final decree was rendered in favor of libellant, and the said claimant having filed his notice and prayer of appeal, with assignment of errors, and having obtained an order granting his appeal to the Supreme Court of the United States:

46 Now, the consideration of the above obligation is such that if the said Arthur Elliot Beattie shall prosecute his said appeal to effect and answer all damages and costs if he fail to make his appeal good, then the above obligation to be void; otherwise to remain in full force and effect.

ARTHUR ELLIOT BEATTIE,
By MOREWOOD & CO., *Agents.* [SEAL.]
AMERICAN SURETY CO. OF NEW YORK,
By DAVID S. SICKELS, *Vice-President.*
[SEAL.] CORTLANDT S. VAN RENSSELAER, *Attorney.*

Taken and acknowledged before me this 13th day of December, 1898.

[SEAL.] JAMES FORRESTER,
*Notary Public, Kings County, New York.*

51076. K. P.

Approved Dec. 16th, 1898.

JAMES W. LOCKE, *Judge.*

47 STATE AND COUNTY OF NEW YORK, *ss:*

On this 14th day of Dec., 1898, before me personally appeared David S. Sickels, vice-president of the American Surety Company of New York, to me known, who, being by me duly sworn, did depose and say that he resided in the city of New York; that he is the vice-president of the American Surety Company of New York, the corpo-

ration described in and which executed the above instrument; that he knew the corporate seal of said corporation; that the seal affixed to said instrument was such corporate seal; that it was so affixed by order of the board of directors of said corporation, and that he signed his name thereto by like order, and that the liabilities of said corporation do not exceed its assets as ascertained in the manner provided by law; and the said David B. Sickels further said that he was acquainted with Cortlandt S. Van Rensselaer, and knew him to be one of the attorneys of said corporation; that the signature of said Cortlandt S. Van Rensselaer subscribed to the said instrument is in the genuine handwriting of the said Cortlandt S. Van Rensselaer, and was thereto subscribed by the like order of the said board of directors and in the presence of him, the said David B. Sickels, vice-president.

[SEAL.] L. E. CARMEN,
*Notary Public, No.* 18, *New York County.*

48 At a regular quarterly meeting of the board of trustees of the American Surety Company of New York, held on the 12th day of April, 1893, the following resolution was adopted:

"Resolved, That the president and vice-president be, and they hereby are, and each one of them is authorized and empowered to execute and deliver and attach the seal of the company to any and all bonds and undertakings for or on behalf of the company in its business of guaranteeing the performance of contracts other than insurance policies and executing or guaranteeing bonds and undertakings required or permitted in all actions or proceedings by law allowed; such guarantee, bonds, and undertakings, however, to be attested in every instance by the secretary, one of the assistant secretaries, or one of the attorneys."

COUNTY OF NEW YORK, *ss:*

I, Cortlandt S. Van Rensselaer, attorney of the American Surety Company of New York, have compared the foregoing resolution with the original thereof, as recorded in the minute book of said company, and do certify that the same is a correct and true transcript therefrom and of the whole of said original resolution.

Given under my hand and the seal of the company, at the city of New York, this 14th day of December, 1898.

[SEAL.] CORTLANDT S. VAN RENSSELAER, *Attorney.*

49 American Surety Company of New York; general offices, 100 Broadway; incorporated April 4th, 1894.

*Financial Statement Sept. 30th*, 1898.

Resources.

| | |
|---|---|
| Real estate and improvements | $3,239,628.64 |
| Stocks and bonds | 1,284,963.10 |
| Bills receivable | 95,788.06 |
| Cash in banks and office | 141,704.40 |
| Premiums in course of collection | 175,719.76 |
| Agency advances | 15,885.91 |
| Rents in course of collection | 30,548.21 |
| Interest in course of collection | 5,270.00 |
| | $4,989,508.08 |

Liabilities.

| | |
|---|---|
| Bills and accounts payable | $1,777.52 |
| Claims in process of adjustment | 236,664.97 |
| Premium reserve requirement | 609,226.98 |
| Net surplus | 1,641,838.61 |
| Capital stock | 2,500,000.00 |
| | 4,989,508.08 |

50 STATE OF NEW YORK, } ss:
*County of New York,* }

On this 14th day of December, A. D. 1898, personally appeared before me, a notary public in and for the county of New York, David B. Sickels, vice-president, and W. S. MacKellar, assistant secretary, of the American Surety Company of New York, who, being duly sworn according to law, did depose and say that the foregoing report is true and correct.

DAVID B. SICKELS,
*Vice-President.*
W. S. MACKELLAR,
*Assistant Secretary.*

Sworn and subscribed before me the day and year aforesaid.
[SEAL.]
L. E. CARMEN,
*Notary Public, New York County.*

(Endorsed:) United States *vs.* Benito Estenger. Bond on appeal. G. Bowne Patterson & H. Putnam, proc. for appellants. Filed Dec. 16th, 1898. E. O. Locke, clerk.

51 UNITED STATES OF AMERICA, ss:

To the United States of America, Greeting:

You are hereby cited and admonished to be and appear at the Supreme Court of the United States, to be holden at Washington on January 14, 1899, pursuant to an appeal filed in the clerk's office

of the district court of the United States for the southern district of Florida, wherein Arthur Elliot Beattie, claimant of the steamship "Benito Estenger," is appellant from a decree entered December 7th, 1898, in said district court, to show cause, if any there be, why the judgment in the said decree mentioned, entered on the seventh day of December, 1898, should not be corrected and speedy justice should not be done to the parties on that behalf.

Seal District Court of the United States, Southern District of Florida.

Witness *the* James W. Locke, judge of the said court of the United States, this 16th day of December, in the year of our Lord one thousand eight hundred and ninety-eight.

JAMES W. LOCKE,
*Judge U. S. District Court, Southern District of Florida.*

Attest: E. O. LOCKE, *Clerk.*

Service accepted.
J. N. STRIPLING, *U. S. Att'y.*

Dec. 17th, 1898.

52 In the District Court of the United States, Southern District of Florida.

THE UNITED STATES
*against*
THE BENITO ESTENGER. } Prize.

This cause having been appealed to the Supreme Court of the United States, it is—

Ordered that the original ship's papers on file in this cause be transmitted to the said Supreme Court with the record on appeal, together with the original copy of the Jamaica Gazette, attached to the deposition of Arthur Elliott Beattie and marked D by the commissioner.

JAMES W. LOCKE, *Judge.*

Jacksonville, Fla., Dec. 22, 1898.

53 District Court of the United States, Southern District of Florida.

THE UNITED STATES
*vs.*
THE STEAMER BENITO ESTENGER. } Prize.

Interrogatories to be propounded to Charles Goldie, a witness to be produced and sworn on behalf of the claimant under the commission to be issued herein to a commissioner at Kingston, Jamaica, to be appointed by the court.

First interrogatory. Please to state your name, age, residence, and official position. If you state that you are the collector of customs

and registrar of shipping at Kingston, please state how long you have been such and if you have custody of the documents filed with you officially in regard to the registration of vessels documented at your port.

To the first interrogatory the said Charles Goldie says:

I state that my name is Charles Goldie; I am 58 years of age and reside at Brensford road, Saint Andrew, Jamaica; I am collector of customs, shipping master, and registrar of shipping of the port of Kingston, Jamaica; I have been such since 1883, and in such capacity I have the custody of all documents connected with the registry of ships at that port.

54 Second interrogatory. Please to produce and identify to the commissioner the following documents, and allow copies thereof to be appended hereto: (*a*) Application in writing by the owner of the Benito Estenger to have a British register for that vessel; (*b*) the bill of sale lodged with you in conformity with the merchant shipping act; (*c*) the owner's declaration made before you as registrar. In producing the foregoing-described papers, please also to state when they were respectively filed with you and whether they are severally in conformity to the requirement of the British law.

To the second interrogatory he answers and says:

I produce and identify to the commissioner the following documents, copies of which I allow to be appended hereto, the copies being now marked "A," "B," & "C:"

(*a.*) Application in writing by the owner of the Benito Estenger to have a British register for that vessel.

(*b.*) The bill of sale lodged with him in conformity with the merchant shipping act, 1894.

(*c.*) The owner's declaration made before him as registrar, which is called the declaration of ownership, which was signed before me according to law and countersigned. In producing the foregoing-described papers, I state that they were respectively filed with me on the 14th day of June, 1898, and are so indorsed. The documents are severally in conformity with the requirement of the British law.

Third interrogatory. Has there been any change of ownership since the date of the aforesaid documents and the 27th day of June, 1898, when the said steamship was captured by the United States?

55 To the third interrogatory he answers and says:

There has not been to my knowledge any change of ownership since the date of the aforesaid documents and the 27th day of June, 1898, when the said steamship was captured by the United States.

Fourth interrogatory. Please to state any other matter or thing relative to said vessel or the ownership or official records thereof, the same as if you had been particularly interrogated in relation thereto.

To the fourth interrogatory he answers and says:

He considered that the papers of the vessel were in good order,

and that there was no reason why the vessel should not be registered as a British vessel.

(S'd) CHARLES GOLDIE.

56 District Court of the United States, Southern District of Florida.

UNITED STATES
*vs.*
THE STEAMER "BENITO ESTENGER." } Prize.

Cross-interrogatories to be propounded to Charles Goldie, a witness to be produced and sworn on behalf of the claimant under the commission to be issued herein to a commissioner at Kingston, Jamaica, to be appointed by the court.

First cross-interrogatory. If, in answer to the second direct interrogatory, you produce and identify to the commissioner the documents therein named, state:

(*a.*) Whether or not the application in writing by the alleged owner of the Benito Estenger to have a British register for that vessel was signed by him or by an agent, and when and where was such signature affixed.

(*b.*) When and where the bill of sale lodged with you in conformity with the "merchants' shipping act" was signed.

(*c.*) If the alleged owner made any declaration before you as registrar, state whether it was in writing. If so, where and by whom it was signed.

(*d.*) If you state that any of the above-mentioned documents were filed with you, state whether or not they bear file-marks and whether or not such file-marks represent the true dates on which such filing occurred.

(*e.*) If you state that the papers before mentioned were filed with you, and that they are in conformity with the British law, give the title and dates of the acts of Parliament to which you have reference.

57 To the first cross-interrogatory he answers and says:

(*a.*) He is satisfied that the application in writing marked A was signed by Arthur E. Beattie and not by an agent. He does not know when it was signed. It was produced to him on the 9th June, 1898, and by him acted upon that day. He does not know where such signature was affixed.

(*b.*) The bill of sale lodged with him in conformity with the merchant shipping act was signed at Kingston on the 9th day of June, 1898. (This is the document marked "B," now produced by him to the commissioner.)

(*c.*) The alleged owner made a declaration on the prescribed official form before me on the 14th day of June, 1898. The form is partly in printing and partly in writing. It was signed at the custom-house, Kingston, Jamaica, by Arthur E. Beattie, in his presence.

(*d.*) The documents "A," "B," & "C" were filed with him and were produced from his official custody. A and C bear file-marks representing the true dates on which such filing occurred. "B" does not bear file-marks, being attached to "A."

(*e.*) The papers before mentioned were filed with him and are in conformity with the British law. The title and date of the act of Parliament to which he refers is the merchant shipping act, 1894.

(S'd) CHARLES GOLDIE.

Interrogatories to be propounded to John Orrett and S. E. Pietersz, witnesses to be produced and sworn on behalf of the claimant under the commission to be issued herein to a commissioner at Kingston, Jamaica, to be appointed by the court.

58 First interrogatory. Please to state your name, age, residence, and occupation. If you state that you have lived in Kingston, Jamaica, please say how long that has been your place of residence.

JOHN ORRETT.

To the first interrogatory he answers and says:

His name is John Orrett; his age is 69 years; he resides at the Grove, St. Andrews, Jamaica, and he is manager of E. S. Orrett's business, and a justice of the peace of the island of Jamaica; he has resided in or near Kingston, Jamaica, nearly all his life.

Second interrogatory. Do you know the steamer Benito Estenger; if so, how long have you known that vessel? Do you also know Arthur Elliot Beattie; and, if so, how long have you known him? Do you know what is his nationality? And if you state that he is a British subject, state how you know that to be a fact.

To the second interrogatory he answers and says:

He knows the steamer "Benito Estenger." He has known her about seven years. He also knows Arthur Elliot Beattie. He has known him personally since the early part of June, 1898. He had known of his firm previously. He knows that Arthur Elliot Beattie is a British subject. He has seen his passport papers signed by Lord Sal-sbury. The father of Mr. A. E. Beattie was a British subject and British consul or vice-consul at Santiago de Cuba.

Third interrogatory. What, if anything, did you have to do with the sale of the Benito Estenger to said Beattie? State fully all that you know of said sale and the negotiations leading up to the same and what part you personally had therein. State when the sale was consum-ated, and give the name of the seller and also the purchaser.

59 To the third interrogatory he answers and says:

Mr. Enrique de Mesa, the previous owner, came to his son's shipping office and told him that he desired to sell the "Benito Estenger." The vessel was then lying in the harbor of Kingston, Jamaica. He asked if he (the witness) could get a purchaser for the vessel. This was early in June, 1898. Some days later Mr. Mesa returned to witness' office with Mr. Arthur Elliot Beattie. Mesa informed witness that he had sold the steamer to Mr. Beattie for

nine thousand pounds. The sale was consummated on the 9th June, 1898. The name of the seller was Enrique de Mesa and the name of the purchaser Arthur Elliot Beattie.

Fourth interrogatory. If you state that the said Arthur Elliot Beattie became the purchaser of the said steamer, state whether or not he is still the owner thereof or whether any transfers or conveyances or sales of said vessel have since been made, to your knowledge.

To the fourth interrogatory he answers and says:

Arthur Elliot Beattie is still the owner of the "Benito Estenger," and no transfer, conveyance, or sale of said vessel has since been made, to his knowledge.

Fifth interrogatory. Please to state any other matter or thing relative to the said vessel or the purchase thereof or to any of the subjects of the foregoing interrogatories the same as if you had been particularly interrogated in relation thereto.

To the fifth interrogatory he answers and says:

That he has nothing further to state.

Cross-interrogatories to be propounded to John Orrett and S. E. Piertersz, witnesses to be produced and sworn on behalf of
60 the claimant, under the commission to be issued herein to a commissioner at Kingston, Jamaica, to be appointed by the court.

First cross-interrogatory. If to the second direct interrogatory you answer that you know the steamer Benito Estenger, state in what trade she has been engaged during the whole period of your acquaintance with her, who the owner or owners were, and state particularly the names of the ports between which she plied and under what flag she sailed. If you state that you know Arthur Elliot Beattie, state when and where you first became acquainted with him, what his business was and has been up to the present time, at what place or places he has engaged in business, and where he has resided.

JOHN ORRETT.

To the first cross-interrogatory he answers and says:

When he first knew the "Benito Estenger" she was engaged in trade between St. Jago de Cuba, Haiti, and Jamaica. When withdrawn from that trade he was informed that she was occupied as a coastal trader between ports in Cuba. Her owners were Galliago, Mesa & Co. She sailed under the Spanish flag until she was bought by Mr. Beattie, after which she sailed under the British flag, having been duly registered at Kingston, Jamaica, as a British vessel. He first became acquainted with Arthur Elliot Beattie early in June, 1898. His business was that of a merchant & sugar-planter, and he believes that is his business up to the present time. He has been engaged in business at Manzanillo, in Cuba, and has resided in Torquay, Devonshire, England, and at Manzanillo and Kingston, Jamaica.

61 Second cross-interrogatory. If to the third direct interrogatory you answer that you had anything to do with the sale of the Benito Estenger to Arthur Elliot Beattie, state whether or not you represented either of the parties to said transaction; and, if so, which one. State the price agreed upon and whether or not the same was to your knowledge ever paid; and, if so, how and in what it was paid.

To the second cross-interrogatory he answers and says:

He did not at the time of the sale represent either party to said transaction, Mr. Mesa having agreed himself with Mr. Beattie for the sale of the vessel. The price agreed upon was nine thousand pounds (9,000). Mr. Mesa having concluded the sale himself, he is unable to say what arrangements were made for payment and how and in what shape the purchase-money was paid.

JOHN ORRETT.

S. E. P. PIETERSZ.

First interrogatory. Please to state your name, age, residence, and occupation. If you state that you have lived in Kingston, Jamaica, please say how long that has been your place of residence.

To the first interrogatory he answers and says:

His name is Simon Emanuel P. Pietersz. His age is 48 years. He resides at 74 Hanover street, Kingston, Jamaica, and his occupation is that of a mercantile clerk and consul for Belgium. He has lived at Kingston, Jamaica, all his life. He was born there.

Second interrogatory. Do you know the steamer Benito Estenger? If so, how long have you known that vessel? Do you also know Arthur Elliot Beattie; and, if so, how long have you known him? Do you know what is his nationality? And if you state that he is a British subject, state how you know that to be a fact.

62 To the second interrogatory he answers and says:

He knows the steamer "Benito Estenger." He saw her for the first time about 7 years ago. He also knows Arthur Elliot Beattie and has known him within the last four months. He always understood that Arthur Elliot Beattie was a British subject from information supplied by Mr. Beattie himself, who informed witness that his place of domicile was St. Michael's, Torquay, Devonshire, England.

Third interrogatory. What, if anything, did you have to do with the sale of the Benito Estenger to said Beattie? State fully all that you know of said sale and the negotiations leading up to the same and what part you personally had therein. State when the sale was consum-ated, and give the name of the seller and also the purchaser.

To the third interrogatory he answers and says:

Mr. De Mesa, who consigned the Benito Estenter to Mr. E. S. Orrett's shipping to him that he desired to sell the vessel. He is accountant at Mr. E. S. Orrett's establishment. A few days afterwards Mr. De Mesa informed witness that he had effected a sale to Mr. Arthur Elliot Beattie for nine thousand pounds (9,000). The

sale was consum-ated on the 9th of June, 1898, by the signing of a bill of sale from Enrique de Mesa to Arthur Elliot Beattie.

Fourth interrogatory. If you state that the said Arthur Elliot Beattie became the purchaser of the said steamer, state whether or not he is still the owner thereof or whether any transfers or conveyances or sales of said vessel have since been made to your knowledge.

To the fourth interrogatory he answers and says:

63 Arthur Elliot Beattie is still the owner of the "Benito Estenger," and he knows of no transfers or conveyances or sales of said vessel, to his knowledge.

Fifth interrogatory. Please to state any other matters or thing relative to the said vessel or the purchase thereof or to any of the subjects of the foregoing interrogatories the same as if you had been particularly interrogated in relation thereto.

To the fifth interrogatory he answers and says:

After the sale Mr. Beattie went on board and took over possession of the vessel and informed the officers in charge that he had become the owner, and gave orders generally as to the further handling of the vessel. He also gave instructions at Mr. E. S. Orrett's office to witness that the ship's accounts and disbursements were to be rendered to him. He also informed witness that he had given to Mr. De Mesa (the late owner) the position of supercargo of the "Benito Estenger."

Since the 9th day of June last.

S. E. PIERTERSZ.

First cross-interrogatory. If to the second direct interrogatory you answer that you know the steamer Benito Estenger, state in what trade she has been engaged during the whole period of your acquaintance with her, who the owner or owners were, and state particularly the names of the ports between which she plied and under what flag she sailed. If you state that you know Arthur Elliot Beattie, state when and where you first became acquainted with him, what his business was and has been up to the present time, at what place or places he has engaged in business, and where he has resided.

64 To the first cross-interrogatory Simon Emanuel Piertersz answers and says:

When he first knew the "Benito Estenger" she was engaged in trade between Haiti, Cuba, and Jamaica. Afterwards she traded between ports on the coast of Cuba. Her owners were the firms Gallego, Mesa & Co. of Santiago de Cuba. She was then under the Spanish flag. I first met Arthur Elliot Beattie in Kingston, Jamaica, about four months ago. He was and is a merchant sugar-planter and ship-owner. He has been engaged in business at Manzanillo and its neighborhood for some years. He has reason to believe that the domicile of the said Arthur Elliot Beattie is at Torquay, Devonshire, England.

Second cross-interrogatory. If to the third direct interrogatory you answer that you had anything to do with the sale of the

"Benito Estenger" to Arthur Elliot Beattie, state whether or not you represented either of the parties to said transaction; and, if so, which one. State the price agreed upon, and whether or not the same was, to your knowledge, ever paid; and, if so, how and in what it was paid.

To the second interrogatory he answers and says:

I did not represent either of the parties to the transaction, but I know that the price agreed on was nine thousand pounds (9,000), which he believes was *bona fide* paid; in what shape or how, witness does not know.

S. E. PIERTERSZ.

65 Interrogatories to be propounded to Arthur Elliot Beattie and Thomas William Beattie, witnesses to be produced and sworn on behalf of the claimant, under a commission to be issued herein to a commissioner at Kingston, Jamaica, to be appointed by the court.

First interrogatory. Please to state your name, age, present residence, and occupation. If you have previously resided elsewhere, kindly state where you have so resided and when your place of residence has been changed.

To the first interrogatory the said Arthur Elliot Beattie answers and says:

His name is Arthur Elliot Beattie; his age is 38 years. He at present resides at Kingston, Jamaica. His occupation is attending to the business of his sugar estate at Manzanillo. His permanent residence is St. Michael's, Torquay, Deronshire, England. He went to Manzanillo, in Cuba, in 1886, and was there until 1890. He went to England, to his residence, in 1890, and was there for 5 or 6 months. He returned to Cuba in the fall of 1890, and left again for his home in Deronshire in 1892. He remained at home for 6 months, and went to Cuba in or about 1893. In June, 1895, he again left for England and returned to Cuba in 1896. In October, 1896, the Spaniards ordered him off his sugar estate, which is 30 miles from Manzanillo, and he went to reside in the town of Manzanillo and left Manzanillo for Jamaica, where he arrived on 2nd June, 1898.

Second interrogatory. What is your nationality? If you state it is British, please to give the names of your parents and their nationality.

To the second interrogatory he answers and says:

66 His nationality is British. His parents were of British nationality; father's name, Richard Hudson Beattie; born at Montrose, Scotland; died at St. Michael's, Torquay, Deronshire, England, which is the home of his family and has been for 35 years. His mother's name was Isabel Brooks. She was British. She resides now at St. Michael's, Torquay.

Third interrogatory. If your father at any time held the position of British consul, please to state when he held that position and for how long and in what town and country. If you state that he

subsequently retired from that position, state when he so retired, where his residence was, and, if he has deceased, state particularly the place of his residence at the time of his decease.

To the third interrogatory he answers and says:

His father held the position of British vice-consul from 1857 to 1863, at Santiago de Cuba, in the island of Cuba. He retired in 1863 and went to reside in England, where he lived until the date of his death, in November, 1885.

Fourth interrogatory. State also where you resided in childhood and youth, in what country you were educated, and where your home now is to which you are accustomed occasionally to return as your permanent domicile.

To the fourth interrogatory he answers and says:

He resided in childhood and youth at St. Michael's, Torquay, England. He was educated in England and Switzerland. His home now is Torquay, Deronshire, England, to which he is accustomed to return as his permanent domicile.

67 Fifth interrogatory. Please to state your present occupation. If you are a member of any firm, please give the names of the other partners of the firm and their citizenship and their several places of residence. If you state that you have possessions in the island of Cuba, please to state where the same are, and which of your firm attends personally to such plantations or possessions. If either of you have formerly lived in Cuba, state when you last left Cuba and came to Jamaica.

To the fifth interrogatory he answers and says:

His present occupation is that of sugar-planter and ship-owner. He is a member of the firm of Beattie & Co. The other members of the firm are Thomas William Beattie, Alfred Beattie, and Richard Hudson Beattie. They are his brothers and are all British subjects. Thomas William Beattie is at present in Manzanillo or thereabouts. Alfred Beattie, he believes, is at present in Torquay. Richard Hudson Beattie, he believes, is at present in New York. He is jointly interested in possessions in Cuba. They consist of lands, sugar estate, mines, and forests in the district of Manzanillo.

They all attend personally to such possessions and plantations except Alfred Beattie, who lives at Torquay. He left Cuba on 2nd June, 1898, and has been in Jamaica since.

Sixth interrogatory. Do you know the steamer Benito Estenger? If so, do you know who was the owner of said steamer on the 27th of June last? If you state that the same was owned by Arthur Elliot Beattie, state from whom the said steamer was purchased, when the purchase was made, and for what purpose.

To the sixth interrogatory he answers and says:

68 He knows the steamer "Benito Estenger." He was the owner of said steamer of 27th June last. He purchased the said steamer from Enrique de Mesa on the 9th June last, on which date the purchase was concluded. He bought the vessel for purposes of trade.

Seventh interrogatory. When did the Benito Estenger leave Jamaica on her last voyage? If you state that you know, state

also for what port she was bound and for what purpose she was sent to such port and what cargo, if any, she carried. At that time was any blockade proclaimed in regard to the port of Manzanillo? When was the first notification in Kingston that said port had been blockaded by the naval forces of the United States? If you state that you know when such notification was received, state how you know and produce and annex to this deposition any publication showing the notification of said blockade.

To the seventh interrogatory he answers and says:

The "Benito Estenger" left Jamaica on her last voyage on the 23rd June, 1898. She was bound for Manzanillo. She was chartered by Flouriache, a Cuban merchant. The vessel was sent for the purposes of trade. Her cargo consisted of food stuffs. At that time no blockade of the port of Manzanillo was declared. The first notification that appeared officially in Kingston that Manzanillo was blockaded was on the 7th July, 1898, and which appeared in the Official Gazette of Jamaica (published by authority) of that date. He produced Gazette of 7th July, 1898. Put in and marked by the commissioner "D." Witness also produces a letter and certificate attached. Put in and marked by the commissioner E.

Eighth interrogatory. Did you at any time have any intention or purpose to violate any blockade or any belligerent rights
69 of the United States by the said voyage of the "Benito Estenger" or otherwise? State fully what your purpose was in sending the "Benito Estenger" upon the voyage on which she was captured.

To the eighth interrogatory he answers and says:

He had not at any time any intention or purpose to violate any blockade or belligerent rights of the United States by the said voyage of the "Benito Estenger" or otherwise. His purpose in sending the "Benito Estenger" upon the voyage upon which she was captured was that she should earn freight.

Ninth interrogatory. Do you know whether the voyage of the "Benito Estenger" was publicly known to the authorities at Kingston, and whether or not the same was communicated to the United States consul before her departure from Jamaica?

To the ninth interrogatory he answers and says:

He knows that the voyage of the "Benito Estenger" was publicly known to the authorities at Kingston. Witness tenders a statutory declaration of Charles Goldie, collector of customs of Kingston. Put in, marked "F" by the commissioner. The voyage was communicated to the United States consul before the departure of the vessel from Jamaica. The United States consul knew that the vessel was leaving for Manzanillo with food-stuffs. He discussed the matter with the consul, who led him to believe that such a voyage would be in order.

Tenth interrogatory. At the time of the capture of the "Benito Estenger," on June 27th, 1898, please to state if you were the sole *bona fide* owner of said vessel. State whether any one else had any interest therein; and, if so, state fully what that interest was
70 and the nationality of the person or persons that were so interested.

To the tenth interrogatory he answers and says:

At the time of the capture of the "Benito Estenger," on the 27th June, 1898, witness states that he was the sole *bona fide* owner of said vessel. No one else had any interest therein.

Eleventh interrogatory. Please to state any other matter or thing relative to the said steamer "Benito Estenger" or to your ownership thereof or to any of the subjects of the foregoing interrogatories the same as if you had been particularly interrogated in relation thereto.

To the eleventh interrogatory he answers and says:

After the purchase of the "Benito Estenger" he appointed Enrique de Mesa supercargo of said vessel. Previous to the sailing of the "Benito Estenger" for Manzanillo Enrique de Mesa, witness' supercargo, and witness had an interview with United States Consul Dent, when Mesa gave the consul bearings of the harbor of St. Jorgo de Cuba, and also an original plan of the eastern province of the Island of Cuba. Consul Dent then proposed that Mesa, with the ship, should meet Admiral Sampson after the cargo had been discharged at Manzanillo, and that the vessel with this object should be off Cape Cruz on the 30th of June for the purpose of meeting a United States man-of-war, which would convoy the vessel up to the fleet under the command of the admiral, who was then blockading Santiago de Cuba, and there give Admiral Sampson certain information as to the approaches to the harbor of Santiago. This, as owner of the "Benito Estenger," he consented to, and impressed upon Mesa the importance of keeping the appointment. He also impressed upon Consul Dent the necessity for prohibiting him as owner of the vessel against a breach of the neutrality laws, he, the witness,
71 being a British subject. He went to the interview sole to act as interpreter for Mesa and at his request. During the interview Consul Dent proposed the appointment with Admiral Sampson and witness acquiesced. Consul Dent assured him that his interests as owner of the "Benito Estenger" would be protected. She was captured upon the 27th of June, and therefore did not have an opportunity of keeping the appointment that the consul had made with Mesa and the witness for the 30th of June.

The "Benito Estenger," witness positively swears, had no contraband of war on board. All the transactions connected with this voyage have been absolutely friendly to the United States. Witness has had no communication, directly or indirectly, with the Spanish authorities, either in Jamaica or Cuba, relative to this cargo or the voyage of his vessel. Had not witness been assured that the vessel would have the protection of the United States he would not have permitted her to sail from Kingston for Manzanillo.

First cross-interrogatory. Are you married? If yea, state when and where you married; whether you have any children, and, if so, how many?

To the first cross-interrogatory he answers and says:

He is not married. He has never been married. He has no children.

Second cross-interrogatory. Have you ever been to Cuba? If so, state when you first went there, and how long and what portion of your time has been spent there since your first visit. Do you own any property in Cuba? If so, state the kind and character and quantity thereof. Do you own a dwelling-house in Cuba,
72 either by yourself or in connection with others? If yea, have you occupied such house, and how long have you occupied same? If you answer that you, either individually or in connection with others, own a dwelling-house, state whether or not your family or wife and children, if you have any, have resided therein with you. If you have any children, where were they and each of them born?

To the second cross-interrogatory he answers and says:

He has been to Cuba. He first went there, on a visit to Santiago de Cuba, about 15 years ago. He went to Manzanillo, Cuba, in 1886, and was there until 1890. He then returned to his residence in England in the same year, and was there for 5 or 6 months. He returned to Cuba in the fall of 1890, and left Cuba again in 1893 for his home in Devonshire, England, where he remained for 6 months. He returned to Cuba about the end of the year 1893. In June, 1895, he again left Cuba for England, and returned to Cuba in 1896. In October, 1896, the witness was compelled to leave his estate by the action of the Spanish authorities, and he went to reside at Manzanillo. In consequence of the war between Spain and the United States he left Manzanillo for Jamaica on the 2d June, 1898. He would have left earlier but was prevented by the Spanish authorities from doing so. He owns property in Cuba jointly with his brother, sugar estate, mining and forest land, about 10,000 acres of land. He does not own a dwelling-house in Cuba by himself or in connection with others. He lived on the estate in a thatched hut, in Manzanillo, in a house rented by him and his firm. He has no wife or children.

73 Third cross-interrogatory. Since your first visit to Cuba, how much of your time has been spent there, and at what place or places?

To the third cross-interrogatory he answers and says:

That he has already replied to this cross-interrogatory in his reply to the second cross-interrogatory.

Fourth cross-interrogatory. If you state that you have spent any portion of your time in Cuba, state how many times you have returned to England since you first went to Cuba. Give the date of each return as nearly as you can and the length of time you remained each time. If you answer that you have a wife and children, has she or they returned to England? If so, give the date of each return and the length of time they remained there.

To the fourth cross-interrogatory he answers and says:

He has returned to England 3 times since his first visit. He returned in 1890, when he was absent for 5 or 6 months. In 1893, when he was also absent for about 6 months. In 1895, when he returned in 1896. He has no wife nor child.

Fifth cross-interrogatory. If, in answer to the fifth direct inter-

rogatory, you say that you have resided in Jamaica, state when and for what purpose you went there. Have you any business in Jamaica? If so, state what it is and when you engaged in it. If you state that you removed to Jamaica, state whether or not your wife and children went with you. State also where you were on the 27th of June last and where your family was.

To the fifth cross-interrogatory he answers and says:

74 He went to Jamaica with Cuban refugees in June 2d, 1898, to sustain his life and earn a livelihood. He did not wish to share the fate of many pacificos. Business in connection with the estate in Cuba and its interest is transacted by him in Jamaica. Since the cessation of hostilities he has sent a cargo of provisions to Manzanillo for the purpose of feeding the workmen on his estate. His firm has since sent by their vessel, the "Edmund Blunt," a similar cargo for the same purpose. He is also now engaged in the interests of the estate—for instance, engaging workmen for the crop of 1898. On the 27th June last he was in Kingston, Jamaica. He has no family.

Sixth cross-interrogatory. If, in answer to the sixth direct interrogatory, you say that Arthur Elliot Beattie owns the steamer "Benito Estenger," state how long you have known her, in what trade she was engaged, the ports between which she plied, and the nationality of the flag or flags under which she has sailed. If you say that Arthur Elliot Beattie is the owner of said vessel, state when he first became such owner; state fully and at length all the facts and circumstances connected with the purchase of said vessel by Arthur Elliot Beattie, the purpose for which the said purchase was made, the consideration paid, and of what the payment or payments consisted. If such payment or payments were made in the presence of any other person or persons, give their name or names and the place or places where the same were made.

To the sixth cross-interrogatory he answers and says:

He owns the steamer "Benito Estenger" and has known her about 10 years prior to his purchase of the vessel. She was engaged in the passenger trade between Santiago and Guantanamo.

75 She sailed under the Spanish flag. He first became the owner of the "Benito Estenger" on the 9th June last. The circumstances connected with the purchase by witness of the "Benito Estenger," he states, are as follows:

Mr. Enrique de Mesa, of the firm of Gallego, Mesa & Co., was in Jamaica. Mr. Douglas, an Englishman, is a partner in the firm of Gallego, Mesa & Co. The "Benito Estenger" was then in the harbor of Kingston. He learnt that Mr. De Mesa wished to sell her. He subsequently offered her to him (the witness); he bought her from De Mesa for £9,000. Mr. De Mesa then executed a formal bill of sale to him and put him in possession of said steamer. He declines to say of what the payment or payments of the purchase-money consisted, but state- that the sale was a *bona fide* one.

Seventh cross-interrogatory. State the character of the business in which you have been engaged since the commencement of the war between Spain and the United States on the 21st of April last,

and whether or not you have sold any supplies to the Spanish government or to any one in its behalf. If so, give the nature, kind, and character of such supplies and the quantity thereof. Have you been engaged in business in Cuba since the beginning of the war between the United States and Spain? If so, at what place, and give the nature and character thereof. State who conducted such business and whether any of your time was devoted thereto.

To the seventh cross-interrogatory he answers and says:

Since the commencement of the war between Spain and the United States on the 21st of April last he has been engaged in the endeavour to keep his business together. He has never bought
76 or sold any supplies from or to the Spanish government or to any one in its behalf. He has not been engaged in business in Cuba since the beginning of the war between the United States and Spain with the exception of the taking of refugees on his steamer, the "Anita," from Manzanillo to Montego bay, Jamaica. This was for one voyage on the 2nd of June, 1898. He would have left Manzanillo a month earlier if he had been allowed to leave by the Spanish authorities.

Eighth cross-interrogatory. If you state that Arthur Elliot Beattie is the owner of said "Benito Estenger," give the names and nationality of the officers of said vessel before he became such owner and the names and nationality of the officers after he became such owner.

To the eighth cross-interrogatory he answers and says:

The officers of the "Benito Estenger" before he became the owner of her were as follows: Captain, Baldemero Perez; he is, witness believes, a Cuban. Purser, José Vinanco Perez; he is a Cuban. Chief engineer, Andrez Santiago; he is a Cuban. The officers of the "Benito Estenger" after he became the owner were as follows: Captain, Edwin Cole; he is a British subject, appointed by witness on his becoming owner. Purser, José Vinanco Perez; chief engineer, Andrez Santiago. Baldemero Perez went as second mate and pilot. Enrique de Mesa went as supercargo. He appointed Enrique de Mesa.

Ninth cross-interrogatory. Do you know Enrique de Mesa? If yea, state his nationality and place of residence. Was he connected with the steamer "Benito Estenger" prior to the purchase by Arthur Elliot Beattie? If so, in what capacity. Was he at the time of the capture of said vessel and after Arthur Elliot Beattie became
77 the owner connected with said vessel; and, if so, in what capacity? Was he on board at the time of her capture; and, if so, in what capacity?

To the ninth cross-interrogatory he answers and says:

He knows Enrique de Mesa. He is of Cuban nationality and lives at Santiago de Cuba. He was connected with the "Benito Estenger" prior to the purchase of the vessel by witness. He was her owner. After witness became owner Enrique de Mesa was not connected with the vessel, nor was he connected with her at the time of her

capture. He was on board at the time of her capture, in the capacity of supercargo.

Tenth cross-interrogatory. Do you know Baldemero Perez? Was he ever connected with the said vessel before Arthur Elliot Beattie became the owner thereof? If so, when, and in what capacity? Was he connected with said vessel after Arthur Elliot Beattie became the owner; and, if so, in what capacity? Was he on board said vessel at the time of her capture; and, if so, in what capacity? Give the names of the officers of said vessel just before and after the purchase by Arthur Elliot Beattie and the nationality of each.

To the tenth cross-interrogatory he answers and says:

He knows Baldemero Perez. He was captain when witness purchased her. He was appointed by witness second master and pilot after witness became owner, and he was serving in that capacity when the vessel was captured. The name- of the officers of said vessel just before and after the purchase by witness and the nationality of each are fully set forth in witness' reply to the eighth cross-interrogatory. With regard to Baldemero Perez, he believes — to be a Cuban. He has known Perez to be for years a staunch sympathizer with the Cuban cause.

ARTHUR E. BEATTIE.

78 District Court of the United States, Southern District of Florida.

THE UNITED STATES
*against*
THE STEAMER BENITO ESTENGER. } Prize.

Interrogatories to be propounded to Edward George Orrett, a witness to be produced and sworn on behalf of the claimant under the commission to be issued herein to a commissioner at Kingston, Jamaica, to be appointed by the court.

First interrogatory. Please state your name, age, residence, and occupation. If you say that you reside in or near Kingston, please state how long you have lived there and what your occupation has been during the time of such residence.

To the first interrogatory the said Edward George Orrett, being duly sworn, answers and says: My name is Edward George Orrett. I am thirty-two years of age. My residence is at the Grove, Half-way Tree, Jamaica. My occupation is merchant and ship broker, and I am also justice of the peace. I have lived at Half-way Tree all my life, with the exception of four years which I passed in Europe for my education, and my occupation during that time has been as already stated.

Second interrogatory. Do you know the steamship Benito Estenger? If so, how long have you known her? Do you know Enrique de Messa? If so, how long have you known him? Do you know in what capacity he was on the said steamship on and after the 23rd day of June, 1898?

To the second interrogatory he answers and says: I know the steamship "Benito Estenger" for about eight years. I know Enrique de Messa for about five or six months. He was supercargo of said steamship on the 23rd of June, 1898, and can only presume that he continued in the same capacity after said date.

79 Third interrogatory. Do you know the United States counsel at Kingston? If so, how long have you known him? If you refer to any official in the consulate, please to state the name and his or their consular office. Did you have any conversation with the consul or the vice-consul regarding the steamship Benito Estenger in June last? If so, please to state the conversation in detail, mentioning when and where it occurred.

To the third interrogatory he answers and says: Yes; I know the United States consul, Mr. Louis A. Dent, and also the vice-consul, Mr. James H. Springer, at Kingston. I have known Mr. Dent since 1893 and Mr. Springer since June, this year. The names and position of the consular officers I have already stated. I had a conversation with Consul Dent in June last regarding general topics. The conversation in detail was as follows: Mr. Dent asked me to let Mr. Messa know that he wanted to see him, and I told him that I would convey his message to Mr. Messa. This conversation took place at the United States consulate at Kingston in the early part of June.

Fourth interrogatory. Did you after such conversation at the United States consulate see or communicate with Mr. De Messa? And, if so, please state what you said to him and what message, if any, you gave to him. If you state that you gave him a message from the United States consul, please to state whether you delivered such message orally or in writing, what the terms of it were, and if in writing produce a copy thereof.

To the fourth interrogatory he answers and says: After said conversation at the United States consulate I saw Mr. Messa and told him that Consul Dent desired to see him at the consulate. I delivered the message in question orally.

Fifth interrogatory. Do you know what, if anything, was done by Mr. De Messa after such conversation with you? If you say that he went to the United States consulate, please to state all that you know regarding such visit and all that took place in respect to the steamer Benito Estenger, giving, as nearly as you can, the date when such visit occurred.

80 To the fifth interrogatory he answers and says: After the conversation I had with Mr. Messa he asked me to accompany him to the consulate, but through press of business was unable to do so and he went alone. As I did not accompany Mr. Messa to the consulate, I am unable to state what took place in respect to the steamer "Benito Estenger." The above occurred in the early part of June.

Sixth interrogatory. Did you know when the Benito Sstenger left Jamaica for Cuba? If so, please state the date, as nearly as you can, and state whether the conversations referred to with you, with

Mr. De Messa, and the United States consul were before or subsequent to such departure of said steamer.

To the sixth interrogatory he answers and says: As near as I can recollect, the steamer "Benito Estenger" left Kingston, Jamaica, for Cuba between the 19th and 23rd of June last. The conversation referred to that took place with United States *counsel*, Mr. Dent, Mr. De Messa, and myself occurred before the departure of the said steamship from Kingston, Jamaica, for Cuba.

Seventh interrogatory. Please state any other matter or thing relative to the said vessel or the said conversations and interviews the same as if you had been particularly interrogated in relation thereto.

To the seventh interrogatory he answers and says: From my experience as a ship broker, it is very difficult to effect a transfer of the flag of a vessel before a register of shipping at a British port. The register enquires rigidly as to the *bona fides* of bills of sales and transfers of vessels.

I know a vessel called the "Purissima Conception;" she was at this port at the same time that the "Benito Estenger" was. She arrived and was lying at Kingston harbor some time previous to the arrival of the "Benito Estenger."

I know as a fact that the owner or representative of the owner applied to the register of shipping for a transfer of her flag, and the register of shipping refused. The representative of the owner was Mr. Schiller, who was the consul for Germany. He informed
81 me personally that he applied to the register of shipping for a transfer and was refused.

Mr. Schiller informed me that the register of shipping had refused to make the transfer, as he had investigated the bill of sale that was put before him, and he did not consider the sale a *bona fide* one, and accordingly refused to entertain the transfer.

The firm of Gallego, De Messa & Co., of Santiago de Cuba, of which firm Mr. Enrique de Messa is a member, had been old correspondents of my firm.

Mr. De Messa is a Cuban, and has always been a warm sympathizer of the Cuban cause, and has always been in favor of Cuba being annexed to the United States of America.

When the "Bentio Estenger" cleared from Kingston, Jamaica, for Manzanillo, Cuba, her cargo consisted of food stuffs. The vessel was chartered by one Solis, whom, I think, was a Cuban, and Mr. De Messa, as supercargo, informed me that the cargo was intended for the Cubans.

When the "Benito Estenger" cleared for Jamaica in June last Manzanilla was not a proclaimed port, and the first intimation of Manzanilla being placed under blockade appeared in the Jamaica Gazette in the early part of July, some time after she had sailed.

When she sailed from this port for Manzanilla, Cuba, she was flying the British flag, and she was cleared by my firm as a British vessel.

After her transfer to the British flag, and previous to her clearing from here, a British master was appointed, a Mr. Edwin Cole,

whom I have known for ten years or more, and whom I recommended to Mr. Arthur Elliott Beattie, a British subject who bought the "Benito Estenger" from Mr. De Messa.

Mr. Beattie is a ship-owner, his firm owning vessels trading on the coast of Cuba. After his purchase of the Benito Estenger he formally took possession of her and appointed me the agent of the vessel and instructed me to account to him for all disbursements of the said vessel.

Before the "Benito Estenger" left here she was carefully rummaged by the custom authorities of this port, and if she had
82 had any contraband of war she would have been seized by the authorities.

The custom authorities during the Spanish-American war exercised such vigilance here that even the despatch boats of the American press, the bulk of which I had to deal with, were not allowed to clear from here if they had a few arms on board unless they could satisfactorily explain why they were on board.

I have every reason to believe that the bill of sale of the "Benito Estenger" to Mr. Arthur Elliot Beattie was a *bona fide* one, and all the documents connected with said transfer were absolutely above board and in every way genuine, and had the transfer been otherwise the customs authorities would not for a moment have entertained them, as Mr. Goldie, the register of shipping and collector of customs of this port, is a most scrupulous and careful man, and of my many years of him in the shipping world I have always found him a most vigilant and careful official.

In all my conversations with Mr. De Messa and Mr. Beattie they always impressed upon me that they were ardent supporters of the Cuban cause, and spurned to do anything inimical to the interests of the Republic of the United States of America.

Mr. Arthur Elliot Beattie informed me that his brothers of the firm of Beattie & Co., of Manzanilla, Cuba, sugar-planters and steamship-owners, have a large claim against the Spanish government in consequence of the arrest and imprisonment of his brothers by the Spanish authorities, and that it would be to the material interest of his firm if the Spanish authorities were ousted out of Cuba.

Witness, E. G. ORRETT.

Answered under oath and subscribed before me this third day of November, A. D. 1898.

[SEAL.]

JAMES H. SPRINGER,
*Commissioner.*

(Endorsed:) The United States against The Steamer "Benito Estenger." Interrogatories to Edward George Orrett, a witness to be examined under a Jamaica commission. Filed this 17th day of Sept., 1898. E. O. Locke, clerk, by Louis Starke, deputy clerk.

83 Exhibits attached to testimony of C. Goldie, "A," "B," & "C," viz:

A.

2765/198.

(Stamp of customs. Jamaica, done 9 June, 1898.)

KINGSTON, *June* 9, 1898.

Charles Goldie, Esq., collector of H. M. customs, Kingston.

SIR: As owner of the S. S. "Benito Estenger," I have the honor to apply to you to have the vessel, now under the Spanish flag and lying in this port, whereof Baldemero Perez is master, registered as a British vessel.

I enclose herein the following documents, viz:

I. Bill of sale from Enrique Messa to me, dated 9th day of June, 1898.

II. Certificate of the vessel's classification.

Please address any correspondence to the care of my solicitor, Mr. William H. Orrett, of 107 Water lane, Kingston.

I have the honor to be, sir, your obedient servant,

(S'g'd) ARTHUR E. BEATTIE.

The vessel may be admeasured.

C. G., *Collector.*

9, 6, '98.

84 B.

*Bill of Sale*

of the Spanish screw steamship "Benito Estenger," of the port of Saint Jago de Cuba, in the island of Cuba, of 300 tons register, with one deck and saloons, built at Kaign's point, Camden, New Jersey, in the United States of America, whereof Baldomero Perez is now master, and now lying in the port of Kingston, in the Island of Jamaica.

I, Enrique Messa, of Saint Jago de Cuba, in the said island — Cuba, merchant, at present at Kingston, Jamaica, in consideration of the sum of £9,000, paid to me by Arthur Elliott Beattie, the receipt whereof is hereby acknowledged, do hereby transfer the entirety of the ship "Benito Estenger," above particularly mentioned and described, and *in* her boats, guns, ammunition, small arms, and appurtenances, to the said Arthur Elliott Beattie. Further, that I, the said Enrique Messa, for myself and my heirs, covenant with the said Arthur Elliott Beattie and assigns that I have power to transfer in manner aforesaid the premises hereinbefore expressed to be transferred, and that the same are free from incumbrances.

In witness whereof I have hereunto subscribed my name and affixed my seal this 9th day of June, 1898.

(S'd) ENRIQUE DE MESSA. [SEAL.]

Executed by the above-named Enrique Messa in the presence of—

(S'd) WILLIAM H. ORRETT, *Solicitor.*

85 JAMAICA, *ss:*

Be it remembered that on the 9th day of June, 1898, at Kingston, in this island, personally came & appeared before me, the undersigned, one of Her Majesty's justices of the peace in & for this island, William Hitchins Orrett, the witness attesting the due execution of the foregoing written bill of sale by the therein-named Enrique Messa, & who, being by me duly sworn, made oath & said that he was present & did see the Enrique Messa duly sign, seal, & execute & as & for his proper act & deed deliver the said bill of sale for the purposes therein mentioned.

(S'd) JNO. ORRETT,
*Justice of the Peace.*

86

C.

Prescribed by H. M. customs.

(British coat of arms.)

With the consent of the board of trade.

Registry form No. 2.

Resident or non-resident, Owner or transferee, } Natural-born subject.

Declaration of ownership by individual.

Official number: 106,495. Name of ship: Benito Estenger. No. wak. and port of registry: First British registry.

| Whether a sailing or steamship. | Horse-power. |
|---|---|
| Screw steamship. | N. H. P., 60; I. H. P., 300. |

| | | |
|---|---|---|
| Length from fore part of stem under the bowsprit to the aft side of the head of the stern post | 146 | 9 |
| Main breadth to outside of plank | 24 | 9 |
| Depth from top of deck at side amidship to bottom of keel | 13 | |

*Number of Tons.*

| | | | |
|---|---|---|---|
| Gross.....C. J.<br>A. E. B. | $370\frac{76}{100}$<br>$[279\frac{}{100}]$* | Registered | $244\frac{59}{100}$ |

And as described in more detail in the certificate of the surveyor & the register book.

[* Figures enclosed in brackets erased in copy.]

I, the undersigned, Arthur Elliott Beattie, of St. Michaels, Torquay, Devonshire, England, merchant, the British consulate of British patents, declare as follows: I am a natural-born British subject, born at St. Jago de Cuba, in the island of Cuba, and have never taken the oath of allegiance to any foreign sovereign or State or have otherwise become a citizen of a foreign State. The above

general description of the ship is correct. Baldomero Perez, whose certificate of competency or service is No. —, is the master
87 of the said ship. I am entitled to be registered as owner of 64 shares of the ship. To the best of my knowledge & belief, no person or body of persons, other than such persons or body of persons as are by the shipping act, 1894, qualified to be owners of British ships, is entitled as owner to any interest whatever, either legal or beneficial, in the said ship, and I make this solemn declaration conscientiously believing the same to be true.

(S'd) ARTHUR E. BEATTIE.

Made & subscribed the 14th day of June, 1898, by the abovenamed Arthur Elliott Beattie in the presence of †—

CHARLES GOLDIE,
*Registrar of Shipping for the Port of Kingston, Jamaica.*

† Declarations must be made before a registrar of British ships, a justice of the peace, a commissioner for oaths, within the meaning of the commissioners for oaths' act 1889 or a British consular officer.

The qualification of the person taking the declaration is to be added to his signature.

(Filing mark:) "Benito Estenger." O/n, 106,495. Po. 10, 14, 6, '98.

88 D.

Exhibit "D" forwarded in original form.

* * * * * * *

Exhibits attached to testimony of A. E. Beattie, viz., "E" & "F."

* * * * * * *

"E."

Form No. 89.

*Certificate that Officer is Qualified to Administer an Oath.*

(Paragraphs 188 and 446.)

I, Louis A. Dent, consul of the United States of America at Kingston, Jamaica, do hereby certify and make known to whom these presents shall come that A. W. L. Hemming, before whom the annexed certificate of signature and the broad seal of the island hath been made, is the captain general and governor-in-chief of the island of Jamaica.

Certificate.

In testimony whereof I have hereunto set my hand and seal of office, at Kingston, Jamaica, aforesaid, this 19th day of July, 1898.

[SEAL.] JAMES H. SPRINGER,
*Vice & Deputy U. S. Consul.*

89 "B."

(Seal.) A. W. L. Hemming.

By His Excellency Sir Augustus William Lawson Hemming, knight, commander of the most distinguished order of the Saint Michael and Saint George, captain general and governor-in-chief in and over the island of Jamaica and its dependencies.

To all to whom these presents shall come, Greeting:

These are to certify that the signature affixed to the annexed letter is that of the Honorable Frederick Evans, colonial secretary of Jamaica.

Given under my hand — the *the* broad seal of this island, at Kings House, this eighteenth day of July, in the sixty-second year of Her Majesty's reign, anno que Domini 1898.

By command:

PHILIP C. COLE,
*Assistant Colonial Secretary.*

90 In case of reply, please quote the date of this letter & the following No.: $\frac{5}{7}\frac{5}{9}\frac{2}{5}\frac{2}{6}$.

COLONIAL SECRETARY'S OFFICE,
JAMAICA, 16*th July*, 1898.

SIR: I am desired by the governor to acknowledge the receipt of your letter dated the 16th instant and to say in reply that the only information in possession of this office in regard to the blockade is that on the 22nd April last blockade was proclaimed of the coast of Cuba between Cardenas and Bahia Honda and the port of Cienfuegos, and that by a proclamation of 27th June the blockade was announced of all ports on the south coast of Cuba and Cape Frances to Cape Cruz, and also of the port of Ramisto de Sevensee.

2. The notification in regard to the first-named proclamation appeared in the Jamaica Gazette of the 28th April, and the notification of the latter in the Jamaica Gazette of the 7th July, 1898.

I have the honor to be, sir, your obedient servant,

F'K EVANS,
*Colonial Secretary.*

William H. Orrett, Esquire, Kingston.

E. United States *vs.* Benito Estenger. Prize. This is the document, marked "E," produced by Arthur Elliott Beattie, a witness, in reply to the 7th interrogatory, this 10th October, 1898. Charles M. Ogilvie, commissioner.

91 "F."

Form N. 89.

*Certificate That Officer is Qualified to Administer an Oath.*

(Paragraphs 188 and 446.)

I, Louis A. Dent, consul of the United States of America at Kingston, Jamaica, do hereby certify and make known to whom these presents shall come that William H. Orrett, before whom the annexed declaration of Charles Goldie, collector of customs at Kingston, Jamaica, hath — made known, is a notary public at Kingston, Jamaica, duly authorized to administer oaths and affirmations and take declarations in lieu of oaths, and that I believe the deponent is worthy of credit and qualified to verify the annexed document.

In testimony I have hereunto set my hand and seal of [SEAL.] office, at Kingston, Jamaica, aforesaid, this 18th day of July, 1898.

JAMES H. SPRINGER,
[SEAL.] *Vice and Deputy U. S. Consul.*

92 JAMAICA, *ss:*

I, Charles Goldie, of the city and parish of Kingston, in this island, esquire, do hereby solemnly and sincere- declare as follows:

1. I am the collector of Her Britannic Majesty's customs for the port of Kingston, in the island of Jamaica.

2. I am well acquainted with Arthur Elliot Beattie, who is a British subject and registered owner of the steamship *S. S.* "Benito Estenger," a British vessel, whose port of registry is Kingston, Jamaica, aforesaid.

3. I am also well acquainted with Edward George Orrett, also a British subject and shipping agent, to whom the said British steamship "Benito Estenger" was consigned.

4. The said British steamship "Benito Estenger" was loaded in Kingston aforesaid with a cargo of food-stuffs.

5. The said vessel, after completing her loading, was cleared for Manzanillo, in the island of Cuba, on the twenty-third day of June, 1898.

6. The certificate of clearance given to the said vessel was an official document under the hand and seal of my office, and which is the usual and only document given to vessels clearing from this port, and I make this solemn declaration conscientiously, believing the same to be true, and by virtue of the provisions of an act of the imperial Parliament of Great Britain and Ireland made and passed in the sixth year of the reign of His Majesty King William the Fourth, entitled "An act to repeal an act of the present session of Parliament entitled 'An act for the more effectual abolition of oaths and affirmations taken and made in various departments of the State, and to substitute declarations in lieu thereof, and for the more

enture suppression of voluntary and extrajudicial oaths and affidavits, and to make other provisions for the abolition of unnecessary oaths,'" and also by virtue of the provisions of "An act made and passed in the sixth year of Her Majesty's reign, entitled "An
93 act to abolish oaths and affirmations made in the several departments of the State, and to *institute* declarations in lieu thereof, and for the more effectual abolition of unnecessary oaths and affirmations."

CHARLES GOLDIE,
*Collector of Customs and Registrar of Shipping,*
*Kingston, Jamaica.*

Made and acknowledged this 18th day of July, 1898, at Kingston, in the island of Jamaica, aforesaid, before me—

[SEAL.] WILLIAM H. ORRETT,
*Notary Public, Kingston, Jamaica.*

(Endorsed:) Dated July 18th, 1898. Statutory declaration of Charles Goldie, Esq., collector of customs for port of Kingston, Jamaica. William H. Orrett, solicitor & notary public, Kingston, Jamaica. F. The United States *vs.* Benito Estenger. Prize. This is the document, marked "F," produced by Arthur Elliott Beattie, a witness, in reply to the 9th interrogatory, this 10th October, 1898. Charles M. Ogilvie, commissioner.

94 Form No. 88.

UNITED STATES CONSULATE,
KINGSTON, JAMAICA, *October 11th*, 1898.

I, James H. Springer, vice and deputy consul of the United States at Kingston, Jamaica, do hereby certify that the signature of Charles McDonald Ogilvie at the foot of this paper is his true and genuine signature, made and acknowledged in my presence, and that the said Charles McDonald Ogilvie is a notary public for the island of Jamaica, personally known to me, and to his acts in said capacity full faith and credit can be given in court and without.

In witness whereof I have hereunto set my hand and affixed the seal of the consulate, at Kingston, Jamaica, this day and
[SEAL.] year next above written, and of the Independence of the United States the one hundred and twenty-third.

JAMES H. SPRINGER,
*Consul of the United States.*

CHARLES M. OGILVIE.

95 In the District Court of the United States, Southern District of Florida.

UNITED STATES
*vs.*
"BONITA ESTENGER." } Prize.

Testimony of Louis A. Dent, taken on October 26, 1898, by agreement of proctors for the United States and claimants, to be used in the final trial of said cause.

Present at the examination: Mr. J. N. Stripling, United States attorney for the southern district of Florida, and Mr. Harrington Putnam, proctor for claimant.

Examination by Mr. STRIPLING:

Q. State your name, age, residence, and occupation.

A. Louis A. Dent; thirty-five; Washington, D. C.; United States consul at Kingston, Jamaica.

Q. Were you consul of the United States at Kingston, Jamaica, at the beginning of the war with Spain, on April 21st last?

A. I was.

Q. Continued to act as such consul up to the present time?

A. I have.

Q. Do you know a steamer called the "Bonita Estenger"?

A. I do.

Q. How long have you known her?

A. Since about the first of last June or the last week of May, possibly.

96 Q. State if you know whether or not she ever bore a Spanish register—whether or not there was any change in her register.

A. She flew the Spanish flag, which was subsequently changed to the British flag.

Q. About what time did this take place?

A. About the middle of June.

Q. Do you know who owned the Bonita Estenger prior to this change of her flag?

A. The firm of Gallego, Messa & Company, of Santiago de Cuba.

Q. Do you know what trade this vessel was engaged in at the time of this alleged change of flag?

A. She was engaged in the coasting trade on the south side of Cuba; I think between Santiago and Batabano.

Q. Of what nationality was Gallego, Messa & Company?

A. Subjects of Spain.

Q. Do you know Arther Elliott Beattie?

A. I do.

Q. And Thomas Beattie?

A. I do.

Q. Do you know anything of the transfer of the steamer Bonita Estenger from either Gallego, Messa & Company or Enrique Messa

to Athur Elliott Beattie, either from your own knowledge or information derived from either of them?

A. I do; I know it from conversation with Arther E. Beattie.

Q. Please state what it is.

A. I had a conversation with Arthur E. Beattie in the Myrtle Bank hotel, in Kingston, Jamaica, I think a few days after the Bonita Estenger left Jamaica, in which I suggested to Mr. Beattie that the change of flag of the vessel was a fraudulent one, and that by his having sworn to the declaration of ownership he rendered himself liable to prosecution under the British merchants' shipping act. Mr. Beattie did not deny that such was the fact, but replied that he had signed the declaration to oblige Mr. Messa, who
97 was an old friend of his. This was the sum and substance of the conversation, which was desultory and not continued.

Q. Where did this conversation take place?

A. In the Myrtle Bank hotel, at Kingston, where we were both residing. Subsequent to the seizure of the Bonita Estenger and of Mr. Beattie's own vessel, called the Greenan Castle, Mr. Beattie called upon me at my office and requested me to use my good offices to secure the release of the latter. (Mr. Putnam objected to any reference to the Gre-nan Castle.) I told Mr. Beattie that I was satisfied to help him with respect to the Greenan Castle, but that he must not expect me to do anything to aid him with regard to the Benita Estenger; that he knew that I knew, and we were both well aware of the fact, that the transfer was fraudulent, and that I could do nothing to aid him with regard to that vessel. I said to him that I regretted the position in which he had placed himself, rendering him liable to prosecution by the British authorities. I asked him the direct question whether my charge was not correct. Mr. Beattie was very much disturbed; said to me that he realized the position in which he had placed himself; that he regretted it very much; that Mr. Messa had not treated him properly; should never have asked him to sign the declaration, and that he had not paid anything for the vessel, but that his plea would be that the vessel was really his, having been given to him absolutely by Mr. Messa; to which I replied, "Given to you, I presume, to be returned after the war was over; given to you for the purpose of effecting the transfer and protecting the vessel;" which facts Mr. Beattie admitted to me were true.

Q. Do you know Enrique de Messa?

A. I do.

Q. Did you ever have any conversation with him in rela-
98 tion to the Bonita Estenger?

A. I did.

(Objection by Mr. Putnam.)

Q. Were these conversations before or after the alleged transfer?

A. I think they were both subsequent. The first was about the time of the transfer—may have been a day or two before or a day or two afterwards—as near as I can recollect.

Q. How many conversations had you with De Messa?

A. Two.

Q. At whose instance was the first conversation had?

A. My recollection is that Mr. Arthur Beattie brought Mr. Messa to my office and introduced him to me. Mr. Messa, if I recollect rightly, called for the purpose of applying to me for a letter of recommendation to the admiral of the American fleet, which would enable him to pass through the American vessels and enter a harbor in Cuba. I told Mr. Messa that it was not within my power to give him a letter of this character, which would be in the nature of a permit or pass through the blockading squadron. He had chartered his vessel to a man by the name of Fluriach for the purpose of taking a cargo, almost wholy of flour, to Manzanillo. The conversation drifted into other matters, and during the course of the coversation Mr. Messa and I discussed the character of the country in the neighborhood of Santiago and Guantanamo, he having been a resident there for a number of years and I having been through the country myself, and in the course of the conversation he made me aware of the fact that he had an old Government plan of the province of Santiago and a specially prepared chart, from a survey made under his own directions, of the harbor of Santiago. At my request he gave both of these to me. Mr.

99 Messa, I think, in the course of the conversation referred to my having given permits to pass through the blockade at Cienfuegos to the steamship "Adula" and seemed to base his request for letter from me on that ground. I advised him that those permits were given under special authorization and for special reasons, and that I had no power to give a letter of the character which he desired, and if I did so would be exceeding my authority. I advised him that the port of Manzanillo was blockaded—that is to say, that a *de facto* blockade existed—of which fact I was aware by letters from Admiral Sampson, and that he would not be able to enter the port of Manzanillo with a cargo surreptitiously. In view of Mr. Messa's apparent good feeling and the fact that he had given to me these plans, I said to him that I would as a favor to him (a conclusion in my own mind which was brought about largely by the representations of Mr. Lay, president of the Cuban junta in Kingston, and of Dr. Caminero, the U. S. sanitary inspector at Santiago, who was temporarily attached to my consulate) write a letter to the admiral advising him that he (Mr. Messa) claimed to have special and intimate knowledge with regard to the topography and general character of the country surrounding Santiago, and that if Mr. Messa would be at a certain point (to be agreed upon) at a certain time that the admiral, if he cared to avail himself of information from him, would possibly send a vessel to take him to the fleet and there question him for the purpose of securing information. Mr. Messa seemed to think that this would be to his advantage, and, after further conversation as to the most available point, he agreed that he would be at a point twenty miles due west of Cape Cruz on the morning of the 30th day of June. That is as I recall the first conversation in its entirety.

100 Q. Had you subsequently any other conversation with Mr. Messa in relation to the Bonita Estenger? If so, please state what it was.

A. I had; I think a few days subsequently. Mr. Messa called again with Mr. Arthur Beattie and told me that he had determined to follow out the idea which had been discussed in the previous conversation. He spoke of the plans necessary to carry this out, referring to the time necessarily occupied in making the run, the fact that he had some cargo to be taken on in Montego bay, etc. I think Mr. Messa again in this conversation attempted to extract from me a letter of protection, which I again declined to give to him, informing him that the port of Manzanillo was blockaded, and that if he went there he would go at his own risk. This conversation was, I believe, the day of the departure of the vessel from Kingston, or possibly the day before—about the 23rd day of June. I think that was all the conversation. Mr. Messa said good-by to me and went away with the understanding that he was not traveling under any protection from me. (I ought to state here, I think, that my reason for agreeing to write to the admiral the facts about Mr. Messa's trip to Cuba and affording the admiral the opportunity, if he saw fit, to communicate to Mr. Messa was as much to test the *bona fides* of Mr. Messa as any other purpose, believing that if Mr. Messa was sincere in his statements to me that he would be at the point specified at the time specified, namely, the 30th day of June, 20 miles west of Cape Cruz.)

(Mr. Putnam moved to strike out all the statement of the witness as to his motive in writing the letter to the admiral, as just stated by witness.)

Q. When do you say this vessel left Kingston?

A. Either the day of or the day after this conversation—I
101 think about the 23rd or the 24th of June.

Q. Have you any information, either of your own knowledge or derived from Mr. Messa or Mr. Arthur Beattie, as to what the cargo of the vessel on this trip consisted?

A. I have knowledge both from Mr. Beattie and, I think, Mr. Messa and also one other party interested in the venture.

Q. State what it was. I would like to have it stated from whom and how you obtained it.

A. From Mr. Beattie, Mr. Messa, and from one other party in the venture. The other party was O. J. Lay, president of the Kingston Cuban junta, who was interested with Mr. Fluriach, the owner of the cargo. Mr. Lay informed me——

(Mr. Putnam objected to any reference to Mr. Lay.)

—Mr. Lay informed me that the cargo consisted principally of 1,100 barrels of flour. The cargo, as already stated, was taken on principally at Kingston, but a portion was to have been taken on at Montego bay. The vessel, however, did not call at Montego bay, but went from Kingston direct, and left that portion of the cargo; went from Kingston to Manzanillo; the portion left at Montego

bay was small, however, and consisted mostly of vegetables, yams, etc. I had also information from Mr. Arthur E. Beattie, and subsequently from Mr. Thomas Beattie, that the cargo was flour, and was landed in the warehouse of Bauriedel & Company, of Manzanilla, and from that warehouse transferred to the adjoining warehouse, which was the Spanish Government warehouse.

Q. Have you any information from Mr. Beattie that that cargo of flour was delivered to Spanish authorities?

A. The information was, as I said, from both the Messrs. Beattie, that the flour was transferred by Bauriedel & Company, through a communicating way from their warehouse to the govern-
102 ment warehouse, immediately upon its delivery. Mr. Thomas W. Beattie informed me that he saw, personally, the flour was transferred, being then in Manzanilla.

Q. Had you any information from Mr. Arthur Beattie?

A. Mr. Arthur Beattie gave the same information, but did not say that he saw the same personally transferred.

Q. Do I understand you to state as a matter of fact that Arthur Beattie said that the flour was transferred to the warehouse of the Spanish government?

A. Yes; it was transferred from the warehouse of Bauriedel & Company to the warehouse of the Spanish government adjoining, in Manzanilla.

Q. I hand you the test affidavit of Enrique de Messa made in this case. I desire you to read it over and state whether or not the facts stated therein are true. If not, state in what respect they are untrue.

A. There is a statement in the first paragraph of this affidavit which I believe to be untrue.

(Mr. Putnam objected to the statement of what the witness believed.)

The statement is that the vessel was brought to Jamaica for the purpose of disposing of it. My belief is founded on my general knowledge of the case. Mr. Messa arrived in Kingston before Mr. Beattie, and therefore could not have come to Kingston for the purpose of disposing of his vessel to Mr. Beattie. Further, the vessel was not transferred to Mr. Beattie until after she was lying in the harbor of Kingston for two or three weeks and until about the time of the decision of the British government in the case of the steamer Purissima Concepcion. Practically nothing was done to effect the transfer of this vessel until it was found that the British government intended to decide that case against my contention.

The third paragraph is not true in the statement that Mr.
103 Messa was employed by Mr. Beattie, because Mr. Messa was the owner of the ship himself, and could not therefore have been employed by Mr. Beattie. (Mr. Putnam objected to the answer as argumentative and moved to strike the same out.) The fourth paragraph is untrue. I have some recollection that Dr. Caminero informed me that Mr. Messa had in his possession some plans, and that I said to him that if that were the case I should be

very glad to get them; that these plans had relation to Santiago or the country thereabout. My recollection is not clear as to Dr. Caminero's exact statement, but I can state with absolute certainty that the most I knew from him, if I knew that much, was that one of the plans was a plan of the harbor of Santiago. I have an impression that subsequently I spoke a second time to Dr. Caminero about these plans and asked him why he had not gotten them for me, and he replied to me that Mr. Messa was going to see me himself about another matter and would bring them, which he did at the time of the first conversation heretofore related by me. It is absolutely untrue that I knew anything of the character of these plans as referred to in this paragraph—that is, the statement that Mr. Messa had contemplated the building of docks in that harbor and had made extensive drawings, showing the depth of water, etc. This information I first derived from Mr. Messa at the time of the interview first above related. The fifth paragraph is untrue in the statement that the special reason making these plans desirable was because they exhibited a suitable place for landing troops in Santiago. Such a suggestion was never made, either by Mr. Messa or myself. I could not certainly have made it, because no landing was contemplated at that time in the harbor of Santiago. The eighth paragraph is absolutely untrue when it asserts that
104 the steamer was in the service of the United States Government. The inference drawn from the previous paragraphs is that the steamer was sailing under agreement with me, and this is false, because, as before stated by me, Mr. Messa was warned by me that the port of Manzanilla was blockaded, and that if he undertook this trip he undertook it at his own risk. The letter which I wrote to the admiral was not in the nature of an agreement, but distinctly an avoidance of an agreement. It simply undertook to advise the admiral of the facts set up by Messa, leaving to the admiral the opportunity of availing himself of them if he so desired.

Q. Do you know George Orrett?

A. I do.

Q. Did you or any person connected with the consulate at Kingston have a conversation with him in June last regarding the steamship Bonita Estenger? If so, please state the conversation in detail, mentioning when and where it occurred.

A. Mr. Orrett is the representative of the firm of Kerr & Company, a large shipping firm, and as such has been in my office frequently. I do not recall ever having had a conversation with Mr. Orrett relative to the steamer Bonita Estenger, except that there is a faint impression in my mind—so faint that I am not prepared to state it absolutely under oath—that Mr. Orrett did at one time—not in June, but quite a while subsequent to the seizure of the vessel—state to me in a desultory conversation that he had been asked to swear to the ownership of the vessel in order to change her flag. It is possible that this may have referred to the Purissima Concepcion, and it is for that reason that I do not state it definitely as referring to this vessel. I know that he was asked to make
105 a declaration for the transfer of the Purissima Concepcion, and it is for that reason that my impression is not so strong

that he also stated to me that he was asked to undertake the transfer of the Bonita Estenger.

Q. Did you, at any time after the beginning of the war, on the 21st of April last, and before the seizure of the Bonita Estenger, request Mr. Orrett to deliver any message to Enrique de Messa in relation to said vessel? If so, state what it was.

A. I am inclined to say, absolutely, no. Certainly I do not believe I ever did, and have no recollection of ever having given to Mr. Orrett any message for Mr. Messa of any kind whatever.

Q. Did Mr. De Messa go to the U. S. consulate in company with Mr. Edward George Orrett or while he was there and have any conversation or transaction in relation to the steamer Bonita Estenger in the presence of Mr. Orrett? If so, state what it was and when it occurred.

A. I have no recollection that Mr. Messa ever came to my office in company with Mr. Orrett or that I ever had any conversation with Mr. Messa in the presence of Mr. Orrett in relation to the Bonita Estenger.

Q. Is there anything else that occurred in a conversation with Mr. De Messa in relation to the 1,100 barrels of flour that you have not already stated?

A. The affidavit of Mr. Messa, which I have just read, recalls to my mind a part of that conversation which I had forgotten. It is the statement that the vessel had booked about 60 refugees in Manzanilla for Jamaica. During the first conversation with Mr. Messa I advised him if he undertook to go to Manzanilla and have an interview with the admiral in the way suggested that he had better not take the cargo which was booked for the vessel, but to go empty, inasmuch as he had these refugees booked and could make a
106 profitable trip that way; that I was satisfied that in no event would the admiral allow the vessel to go through with this cargo. I was very much surprised a few days subsequently to know that he was shipping the cargo, and in the second conversation I advised him again that it was quite certain that the admiral would not pass the cargo if he should undertake to go through.

Mr. DENT: Since hearing my testimony read from the stenographer's notes, I desire to state that my belief that the first paragraph of Mr. Messa's test affidavit is untrue in the statement that he went to Jamaica with the intention of disposing of the vessel to Messrs. Beattie & Company is based particularly on a statement made to me by Mr. Messa himself, in the first conversation before referred to, wherein he said that he had left Cuba with the vessel with the intention of taking her down to the Eastern islands of the Carrib-ean (I think he mentioned the place, but I have forgotten it) for the purpose of either doing some business with her or of disposing of her in some way, which I do not now recall.

Cross-examination by Mr. PUTNAM:

Q. Have you the original or a copy of the letter referred to in your direct examination to Admiral Sampson, making this appointment to meet the Bonita Estenger?

A. First, the assumption that the admiral made an appointment is incorrect, in that the letter stated to the admiral (Mr. PUTNAM: I must object to the contents of the letter unless you produce it) is incorrect, because I had no authority to make an appointment for the admiral. A copy of the letter will be found in the records in the State Department, under cover of a despatch of mine detailing the circumstances of the case.

107 (Mr. PUTNAM: Inasmuch as the testimony has related to the contents of this letter, I must require the production of the letter or a copy before going on with the cross-examination. I do not require any formalities as to the copy; if Mr. Dent has a copy in his letter-press book that he can authenticate it will be sufficient.)

(Mr. STRIPLING: An effort will be made to obtain a copy from either the State or the Navy Department.)

Q. You stated that you knew that the blockade existed at the port of Manzanilla through letters from Admiral Sampson. Have you any such letter or copy of letter advising of the existance of the blockade?

A. I have not the original letters, because they are now on file in my office in Kingston.

Q. Do you understand, as United States consul, that it is competent for an admiral, of his own motion, to proclaim a blockade of a port?

A. I do not. I do not believe that I stated the admiral proclaimed a blockade, but that he had put a *de facto* blockade in force.

Q. When do you understand the President proclaimed a blockade of the port of Manzanilla?

A. Subsequent to the time that the admiral put the *de facto* blockade in force.

Q. Do you know the date?

A. I think it was the 27th day of June.

Q. What time was this first conversation that you stated occurred with Mr. Beattie and Mr. De Messa at your office?

A. I should say about the 20th day of June.

Q. Have you any means of fixing the date more accurately that that?

A. I have not, in the absence of the records of my office. My recollection is that the Bonita Estenger sailed from Jamaica
108 about the 23rd or 24th of June; that the second conversation was on the day of her sailing, or possibly the day before, and that the first conversation was two or three days previous to the second. It is for that reason that I fix approximately the date was about the 20th of June.

Q. Do you state it was the first conversation or the second conversation when you were told that the vessel would carry a cargo?

A. My recollection is that I knew that the vessel was to carry a cargo before either of the conversations, but that the question of the vessel doing anything was depending upon the change of flag.

Q. Do you recall knowing this vessel previous to her arrival at Kingston, in Jamaica, in June or May last?

A. I do not.

Q. What day is it you recollect that she first came to Kingston?

A. I could not say definitely. The steamer Purissima Concepcion came into the harbor of Kingston the last week in May and the steamer Bonita Estenger followed her a few days later.

Q. It is stated in the test affidavits of Mr. De Messa, which you have read over, that she arrived in Jamaica on June 4th. Does your recollection agree with that or does it differ from it?

A. I could not state my recollection any more definitely; that does not appear to be so far different from my statement as to lead me to deny it, in the absence of the records of my office.

Q. You have referred to the steamer Purissima Concepcion and to some contention that you made with the authorities. Will you just state briefly what that was and what the result of it was?

109 A. The Purissima Concepcion arrived in the harbor of Kingston, flying the Spanish flag, in charge of a Spanish naval officer, who had a large sum of money in his possession for the purpose of purchasing supplies and then returning to some convenient port in Cuba where the supplies could be placed within the reach of the Spanish authorities. Within two or three days after she arrived I protested to the British government against the vessel being allowed to leave the port of Kingston with her supplies on the ground that the supplies were intended for the Spanish troops and were therefore contraband of war, and her departure with the knowledge of these facts would be a violation of neutrality on the part of the colonial government. The question was referred to London, and the decision was against my contention. I then raised the point that under the British neutrality proclamation the vessel carrying an officer of the Spanish navy was carrying contraband of war, and her departure would be a violation of neutrality, and pressed the second time my previous contention. The case was again referred to London, and the decision was again against me. In the meantime, some efforts had been made to change her flag. Various parties had been approached in the effort to secure the declaration of a British subject that the vessel was his property. Owing to the notoriety in the case, the collector of customs of Kingston was explicit and almost threatening in his warnings to those who applied for the purpose of effecting a transfer. I also filed a protest against that. Eventually, after some three weeks, the change of flag was not effected, but the vessel was allowed to sail under the Spanish flag with her cargo.

Q. Do you recall about the time when she was allowed to sail?

110 A. The Purissima Concepcion sailed, as I recall it, on the morning of the 16th of June.

Q. When you speak of that case being decided against your contention, you do not refer to the ownership, but to the permission to leave the port, do you not?

A. Yes.

Q. That was the decision that was against your contention?

A. Yes.

Q. When was that made?

A. Permission was finally given for the vessel to sail on the afternoon of the day preceding her sailing.

Q. That would be the 15th?

A. The afternoon of the 15th. I should state further in the history of the facts connected with this vessel, when my protest was first made the vessel had come alongside of the dock and was loading cargo. She was ordered away from the dock pending the decision. She subsequently returned to the dock and was practically loaded when my final protest was made to the colonial authorities against the change of flag, on the ground that it was fraudulent, so that the vessel, not having effected the change of flag, was practically ready to sail and did sail a few hours after permission was granted. Those few hours she employed in completing her cargo.

Q. The Purissima Concepcion was a very important matter and occupied your time for several days?

A. Yes.

Q. Are you not very much mistaken in saying that the decision of the case had anything to do with the Bonita Estenger?

A. I think not.

Q. If I should call your attention to the fact that the Bonita
111 Estenger was transferred on the 9th of June—a week before this decision—would that change your answer?

A. Not at all. I do not recall the date when the Bonita Estenger was transferred; my impression is that it was later than the 9th. However that may be, I am quite positive that the Bonita Estenger did not begin to take her cargo on until after the Purissima Concepcion case was decided.

Q. Have you any reason to believe that the transfer was made in the night?

A. My reason for thinking so is that, according to my recollection, the vessel was considerably longer in port than the period you state—between the 4th and 9th of June—before her transfer was effected.

Q. Do you still think that the vessel was there for three weeks before her transfer was effected?

A. As to the exact period of time, it is difficult for me to speak with absolute certainty, because just at that time I was engrossed with a great many important matters, and, while my impressions were quite strong of the facts, I could not state absolutely that the vessel was in port three weeks before her transfer was effected.

Q. Is it not a fact that besides the Purissima Conceptione your attention was devoted to several other matters, including the Haytien

schooner "Emanuel Raoul," the Spanish schooner "Ramona," and several smaller vessels that were in Jamaican ports at that time?

A. My especial attention was devoted to the steamers Purissima Concepcion and the Bonita Estenger. The other vessels were small and unimportant, comparatively speaking, and besides the most of them were in the harbor of Montego bay, and I left the investigation as to those ships and the watching of their movements and the people connected with them to my agent at Montego bay, Mr. Corinaldi, who was quite competent to take charge of these
112 matters and keep my office informed.

Q. Did you write to Capt. Sampson the letter of June 14th, copy of which is annexed to the deposition *in preparatorio?*

A. I did; and it enables me to answer your question as to the change of flag of the Bonita Estenger. You will observe that in this letter, dated June 14th, I stated that No. 2 (which is classed as the Bonita Estenger) may change her flag, which shows that the Bonita Estenger did not change her flag previous to the 14th day of June.

Q. Did you make any inquiry at the custom-house at Kingston regarding the change of the record (title) of the Bonita Estenger at any time?

A. I did not, for the reason that no information of that character would have been furnished to me.

Q. Have you with you the plans of the eastern portion of Cuba and the surveys of Santiago harbor that you say you received from Mr. Beattie and Mr. De Messa at that first interview?

A. I have not them in my possession.

Q. Will you state what was done with them?

A. I sent them to Admiral Sampson.

Q. Did you accompany them with any letter?

A. I think I can state positively that I did; I should not have transmitted them otherwise.

(Mr. PUTNAM: I also call for the production of the letter enclosing or forwarding these plans.)

Q. Did you keep any copy of them?

A. No; the plan of Santiago was a tracing.

Q. What we describe as a pencil tracing or an ink tracing?

A. It was an ink tracing. The plan of the province was also an ink tracing, showing the topography, etc., of the country in colors. It was very old.

113 Q. Can you recall the date of that letter forwarding these plans to the admiral?

A. I am not certain, but I think it was the 23rd of June. I wrote a number of letters to the admiral at that time, but I cannot tell specifically what any one of them referred to.

(Mr. PUTNAM: I call on the Government for the production of these plans that were furnished at that time to the United States consul, and more particularly for the plan or survey of the harbor of Santiago.)

(Mr. STRIPLING: I will state that we will try to produce them, but do not feel under any obligations to do so; it does not seem a pertinent question.)

Q. Are you able to speak fluently in Spanish yourself?

A. I am not; I understand it some.

Q. In this interview with Mr. De Messa did you employ any one to act as an interpreter?

A. I did not employ any one to act as interpreter, but Arthur E. Beattie so acted.

Q. Who usually acts as interpreter to the consulate in matters relating to the Spanish language?

A. There is no one especially attached to the consulate for that purpose. When Dr. Caminero was first detailed to the consulate he acted as interpreter for me on occasions, but after the appointment of Jas. H. Springer, who arrived at his post on the 6th day of June, I should say he generally acted as an interpreter.

Q. Did Dr. Caminero remain at the consulate after the 6th of June?

A. I do not recall when Dr. Caminero left the consulate, but he was detached and ordered to return to Santiago. He must have been there the 6th of June, as he could not have returned to Santiago until after the surrender, which was in July.

114 Q. Are you clear in your recollection from whom you first heard about these plans and surveys of Santiago—whether from Dr. Caminero, Mr. Beattie, or Mr. De Messa?

A. As I have said, I first heard from Dr. Caminero that Mr. Messa had certain plans, and Dr. Caminero may have gone so far as to say to me that one of them was a plan of the harbor of Santiago. I think it very likely that he did, but as to the character of the plans, their details, etc., I first learned that from Mr. Messa in a conversation that I had with him.

Q. It is a fact that you asked Dr. Caminero to bring Mr. Messa to the office or to bring the plans to the office?

A. It is a fact that I first asked Dr. Caminero to get the plans for me.

Q. How long was that before you actually had an opportunity to see the plans?

A. As before stated, my impression is that I had to ask Dr. Caminero the second time to procure the plans before they were finally brought to me.

Q. Did you know at the time who were the agents of the Bonita Estenger—that is, to whom the vessel was consigned in Kingston?

A. I think I knew at the time, but I cannot now recall with certainty.

Q. Without my suggestion to you that the agent of the vessel was Mr. Orrett, I will ask if that refreshes your recollection?

A. I could not say, but I would not say that it was not Mr. Orrett.

Q. Would it not be very natural that you should send word to Mr. De Messa or to the ship through Mr. Orrett if he were the agent of the vessel?

A. It would be, if I had any business with the vessel.

Q. Then, according to your recollection, you knew of the
115 plans and you asked Dr. Caminero to obtain them for you?

A. Yes; I would say that.

Q. And you may have asked him more than once before you secured them?

A. Yes; I would say that.

Q. The very first time that Mr. Arthur Beattie and Mr. De Messa came to your office did they bring the plans or the surveys and show them to you or was that the second time?

A. My impression is that it was the first, although that, like other statements, is subject to the statement that in the absence of my records I have only to depend upon my recollection.

Q. Do you remember whether either gentleman stated he brought the plans because Dr. Caminero had asked that they should bring them?

A. I do not remember that either one said that. It is not unlikely that they may have said so, owing to the circumstances of the case.

Q. Do you remember whether there was any pencil mark put on the plans, either by you or by them, of any point in Santiago harbor or any other addition made to them at the time by pencil or ink or in any way?

A. In the course of a conversation Mr. Messa told me that he had had the survey made himself and had superintended the survey for the purpose of locating a good position to erect a wharf. Whether that position was already indicated on the map or whether Mr. Messa indicated to me the position at the time with a pencil or pen or something else I do not now recall.

Q. Did he have any reluctance to delivering you those papers?

A. None whatever. He did state that he wished to retain the specification or contract or agreement of some kind, which
116 was attached to the plan, but when leaving the office he neglected to take that with him, and he left it there. I think it is still in my office in Kingston.

Q. Do you remember which was first in the conversation, the production of the plans or the suggestion about the letter to Admiral Sampson?

A. I do not. As before stated, my impression is that the main object of Mr. Messa's visit was for the purpose of procuring a letter.

Q. Was it not stated in connection with the survey that it would be likely that he might have an interview with the admiral to explain these plans to him?

A. No; I do not think that. The suggestion as to the interview, as I recall, was for the purpose of giving to the admiral general information about the country which was then or about to become the fields of operation.

Q. Do you remember who first suggested the interview; whether you suggested it or Mr. De Messa suggested it?

A. I do not remember that.

Q. Did you ask him to leave the plans for the purpose of forward-

ing them to the admiral, or did you tell him what you would do with the plans if you received them?

A. I do not remember, but I think it quite likely that I informed him that I would send the plans to the admiral.

Q. It would be very natural, then, that you would speak also of his conferring with the admiral to give him any additional information about the port of Santiago, would it not?

A. I do not know that it would be any more natural for me to suggest that than it would be for him, and, as I stated, I do not remember who suggested the interview.

Q. Did you not keep in your office a journal or record of these transactions?

117 A. I did not. The only record of my transactions is that contained in my official dispatches and in my official letter books, except where information was furnished to me in writing. It makes no difference of what character the writings were, I retained them.

Q. When did you first know that the flag of the Bonita Estenger had been changed?

A. I do not now remember, but from the letter which I wrote to the admiral it must have been subsequent to the 14th of June.

Q. Did you learn it from any official notification or did you hear it in conversation?

A. I certainly did not learn it from any official communication. It must have been given to me through some other channel, of which I had a number in those days.

Q. You stated that you had a conversation with Mr. Beattie in regard to his ownership of the Bonita Estenger. Was that before or after the vessel had sailed?

A. As I stated in my direct examination, I think the first conversation was shortly after the vessel sailed.

Q. Do you remember whether it was before or after the capture?

A. The first conversation was before the capture, I think. The second was certainly after the capture.

Q. In your judgment, if Mr. Beattie did not pay cash for the vessel, but received the vessel without paying the full consideration in money, would the transaction be fraudulent?

A. You ask me to give an interpretation of international law.

Q. You used the expression that the sale was "fraudulent," and I am asking now to get at what you mean by the word "fraudulent."

A. I mean by the word "fraudulent" that the vessel was transferred without any consideration whatever.

118 Q. That you consider would be fraud?

A. I do.

Q. That was your view at the time of this conversation?

A. It was.

(Mr. STRIPLING: I object to witness giving his opinion as to what facts constitute "fraud.")

Q. How long have you known Mr. Arthur Beattie?

A. I made the acquaintance of Mr. Arthur Beattie on the day of his arrival in Kingston, some time in June. He came to my office and brought a distressed American seaman, who had been brought over from Manzanilla on his vessel, the Greenan Castle, then called the Anita.

Q. You knew that he was a British subject?

A. I always so believed.

Q. Did you file a protest with the collector or with the authorities in Kingston against the transfer of the title of the Bonita Estenger?

A. I do not recall whether I did or not, because the question of the Bonita Estenger at that time was considered by me to hinge largely upon the decision of the Purissima Concepcion case.

Q. According to your best recollection you did not file a protest?

A. I doubt whether I filed a specific protest against the Bonita Estenger.

Q. Are you quite positive that you stated to either Mr. Beattie or Mr. De Messa that there was any kind of blockade at Manzanilla *of* the 23rd of June?

A. I am quite positive.

Q. At which interview did you state that?

A. As before stated, I believe I informed Mr. Messa at both interviews.

Q. Did you notice that the vessel cleared for Manzanilla?

A. My recollection is that she did, and that I knew it at
119 the time, by way of Montego bay, but she did not call at Montego bay.

Q. Did you expect that this vessel would meet Admiral Sampson or some vessel that he should send at the place, 20 miles west of Cape Cruz, on the 30th of June?

A. I cannot say that I did. I thought it possible that the admiral might wish to avail *my*self of an interview with Mr. Messa, in which case he would probably send a vessel, or, in any event, that he would send a vessel to intercept the Bonita Estenger.

Q. Did you consider that the Bonita Estenger would be violating the blockade if she made the run that she had cleared for?

A. I did.

Q. When you say that the admiral would send a vessel to intercept her, do you mean to capture her?

A. Either to capture her or, owing to the peculiar circumstances of the case, to turn her back, with a warning.

Q. You understand that at that time, the 30th of June, the Bonita Estenger would have already entered the port of Manzanilla and have come out again, did you not?

A. I cannot say that I did. I recall that I was very much su-prised that Mr. Messa left Jamaica so soon as he did, because by leaving as soon as he did he could not keep the appointment.

Q. Didn't you state that he talked over with you how long it would take to make the run to Manzanilla and then to Cape Cruz?

A. I did; and it was for that reason that I was su*pp*rised that he left so soon and did not call at Montego bay.

Q. Did he state to you what day he would leave?

A. He did, I am quite certain, and left some two or three days previous to that, omitting the port of Montego bay, which he declared he would enter and take more cargo.

120 Q. Does the calling at Montego bay, in your judgment, change the transaction in any way?

A. It changes it in this way: If Mr. Messa had done as he said he would do he would not have been at the point of his capture three days previous to the 30th of June, and the fact that he did not carry out the plans which he suggested to me fixed in my mind the impression that he had no intention of being at the point specified.

Q. You have the idea that it was his option to leave the port of Manzanilla whenever he pleased after he once arrived there?

A. I attempted to exercise no charge or control with respect to his movements.

Q. I put this matter to you, Mr. Dent, as a matter of good faith that you had on the 14th written to the admiral, giving the name of this vessel; that you had afterwards received these plans and surveys of Santiago, and that you had made the suggestion that there might be an appointment to confer with the admiral and give him this information; that the vessel makes the voyage to Manzanilla that she had intended and before she can arrive at the point she is captured, and I would like to know what explanation you have of the capture after such an arrangement had been made.

A. My answer is this: Mr. Messa came to me and asked me to give him some protection. I refused to give him a permit, as already stated, and it was suggested that I give him a letter. I refused to give him a letter to the admiral, as I did not have strong faith in the good faith of Mr. Messa, and in order to test Mr. Messa I agreed to this plan; that I said to him that if he wanted to go over there and make this trip I would put it in his way to present his case to the admiral personally and then let the admiral

121 decide whether he could make the voyage, and that in order to do that I would write this letter direct to the admiral which I would not give to him, and he could make the voyage at his own risk and venture and take the admiral's decision if he saw fit. Mr. Messa did not keep good faith, because he did not keep the appointment; went into Manzanillo and was captured three days before the time set for the appointment. I state to you very frankly that my dealing with Mr. Messa, in my official capacity, was naturally reserved and cautious, and that the plan already agreed upon was, as stated on my part, one which would test his good faith.

Q. I still do not understand that you claim there was any breach of faith in going into Manzanillo, but that he did not keep his appointment with the admiral on the 30th.

A. I claim that the entire transaction was a breach of faith on Mr. Messa's part. As before stated, I told him that it would not be advisable for him to carry a cargo, because, in my judgment, the admiral would in no event permit a cargo of that character to be landed in Cuba. Mr. Messa's movements were left entirely to himself, at his own risk, and the advantage which he was to obtain was

by endeavoring to obtain the interview with the admiral in the manner suggested.

Q. Do you consider that was an advantage to him or an advantage to the admiral?

A. In that transaction it was an advantage to Mr. Messa, inasmuch as he would ascertain from the admiral whether he could enter the port of Manzanillo and undertake the contract for bringing out refugees. It might have been an advantage to the admiral if the admiral had seen fit to interview Mr. Messa, and had, as a result of such interview, obtained information of value to him.

Q. Do you know what interest Mr. Lay had in this cargo?

122 A. Mr. Lay was interested with Mr. Fluriach, in what way I don't know, but that he was interested in some manner, either to the extent of some share in the profits of the venture or as an employee of Mr. Fluriach, I know, not from statements of Mr. Lay alone, but from the fact that Mr. Lay brought Mr. Fluriach to my office, and they attempted to obtain some protection from me as well as Mr. Messa, and in the course of that interview Mr. Fluriach admitted Mr. Lay's interest in the manner.

Q. Was that before or after the interview with Mr. De Messa?

A. My impression is that it was both before and after; the interviews with Mr. Lay were more than one, and I think both before and after. The interview with Mr. Fluriach and Mr. Lay may have been after.

Q. Did they inform you that the cargo was to be of flour?

A. They did.

Q. Did you at any time advise them not to ship it?

A. My recollection is that I said to Mr. Lay practically the same thing that I said to Mr. Messa—that I did not believe the admiral in any event would permit a cargo of that character to enter a port of Cuba.

Q. Did you say that the worst that would happen would be that the ship might be turned back?

A. I said to Mr. Lay that I would represent to the admiral the facts as he presented them to me, and that possibly, in view of his services to me, the admiral might be disposed to let the vessel pass or simply warn her and turn her back.

Q. Was that letter regarding Mr. Lay's cargo a separate letter from the one regarding Mr. De Messa's maps and plans?

A. I think it very likely that all the matters in connection with this ship were set forth in the same letter, though it is possible that it may have been a separate letter.

123 Q. If it were a separate letter, was that also communicated in your dispatch to the State Department?

A. Yes.

(Mr. PUTNAM: We make the same call in regard to that letter as in regard to other letters.)

Redirect examination by Mr. STRIPLING:

Q. At the time you were talking with Mr. Messa about meeting Admiral Sampson, was it contemplated that he should go first into Manzanillo, or was he to go to the suggested point of meeting from Jamaica?

A. From the character of the whole transaction, I should say that it was not contemplated that he should carry that cargo into Manzanillo.

Q. Do you mean to say that it was contemplated that he should first see Admiral Sampson before entering a Cuban port?

A. His object in seeing the admiral was to ascertain just what he could do.

Q. In other words, you could not give him the information he wanted, and the purpose of this contemplated meeting with Admiral Sampson was to obtain from him what he failed to secure from you?

A. That is my recollection.

[SEAL.]

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National Hotel, Washington, D. C., October 26, 1898.

124 THURSDAY, *October Twenty-seventh*, 1898.

Cross-examination of Mr. Dent continued by Mr. Putnam this date.

Same appearances as yesterday.

Mr. Dent, in response to the demand of yesterday, produces copies of certain letters which were transmitted by him to the Department of State, being substantially the letters referred to in yesterday's examination, and they were numbered: Enclosure No. 1, dispatch No. 170, being letter of June 21, 1898, to Captain Sampson, marked "A—G. M. R.;" enclosure No. 2, dated June 22, also to Captain Sampson, marked "B—G. M. R.;" enclosure No. 4, from Captain Sampson to Mr. Dent, dated June 25, 1898, marked "C—G. M. R.;" enclosure No. 5, letter from Mr. Dent to Captain Sampson, dated June 23rd, marked "D—G. M. R."

Mr. DENT: I wish to state that from the nature of these papers they are of a confidential character, and that I present them for the inspection and use of the court and counsel as such, having been demanded by counsel for claimant.

Q. Were you able to find any communication from Captain Sampson, acting rear admiral, regarding the blockade of Manzanillo, which we spoke of yesterday? The paper that is referred to here, Exhibit "C," is dated June 25, 1898, and my inquiry relates to communications to you prior to that date.

A. I was unable to find in the files of the State Department any previous letter, although I am very strongly of the opinion there were other previous letters, which can be found in my office in Kingston. My impression is that I had a letter from Admiral Sampson of as early a date as the 17th or 18th of June in reference to this subject.

Q. On looking over these papers do you wish to correct any statements that you made yesterday about your arrangement with the admiral?

A. From the reading of the letters, particularly those of
125 June 23rd from myself to the admiral and of June 25th from the admiral to me, there are two points on which my recollection, as stated yesterday, would seem to be somewhat conflicting. I observe in the letter of June 23rd to the admiral that I stated the suggestion for an appointment came from myself. Naturally, the letter having been written at the time, I am more disposed to accept it than my own recollection at this date, which I believe in my testimony of yesterday was somewhat vague and uncertain on this point. The other point is as follows: In my testimony of yesterday I believe I stated very positively that my warning to Mr. Messa as to the blockade was based upon letters from the admiral advising me of the fact of the blockade. If, as might be, the letter numbered Exhibit "C" from the admiral be the earliest letter which I had from the admiral upon the subject it stands as a matter of course that I could not have given my warning to Mr. Messa based upon letters from the admiral. The reading of these papers has refreshed my memory somewhat. I am quite positive that I had information of the blockade previous to the date of the admiral's letter. At that time I was in constant communication with the admiral through letters and through verbal messages by means of the press dispatch boats, which were frequenting Jamaica daily, and it may be my information of the blockade came through this source. In addition to this, I recall having some conversation with Commander Emory, of the U. S. S. "Yosemite," who arrived in Kingston upon the date of the capture of the "Purissima Concepcion"—that is, June 16th—and I remember distinctly discussing the matter of the blockade with him. It is my impression that Commander Emory told me at that time that the admiral was establishing this blockade, and he asked me particularly again with reference to my suggestions to the admiral previously as to the exact location and character of the blockade.
126 The only correction which I might possibly make, therefore, in my testimony is that my information of this blockade may possibly have come through other means than by letters from the admiral, if no others of earlier date should be brought to light. The letters produced do not change in the slightest particular my testimony in this respect—that is, I do not wish to withdraw or to take the slightest emphasis from my iteration of yesterday that there was never at any time or under any circumstances any semblance of an agreement between Mr. Messa and myself, or any effort on my part at any time or by any methods to persuade Mr. Messa to any particular course. Mr. Messa laid his own plans, followed his own judgment and his own wishes, and whatever I did in this connection was simply as a matter of favor and advantage to himself.

Redirect examination by Mr. STRIPLING:

Q. In your letter to Captain Sampson of June 23rd, marked "D," you use this language: "His vessel (referring to the Benito Estenger) leaves tomorrow night for Montego bay for Manzanillo, and he has assented to my suggestion as follows: When he leaves Manzanillo he will be presumed to go to Trinidad to bring refugees to Jamaica, but he will come outside of the keys and stand off 20 miles from Cape Cruz due west, where a cruiser can pick him up, ostensibly detain his vessel for examination, take her to the fleet, where you can interview him to any extent you may desire if you see fit. The object of apparently capturing him will be to disarm suspicion on the part of the Spaniards, who would know his vessel." I desire to know if the departure of the vessel on the occasion referred to depended in any way upon any suggestions made by you or any consent, either orally or in writing, express or implied, on your part to such departure.

127 A. As I believe I have before stated in my examination, Mr. Messa's plans as to his trip to Cuba and his return to Jamaica were entirely and absolutely of his own making. I had no part in them whatsoever. I had no control over them; gave no assent to them in any manner. The only connection I had with them was to suggest that in the course of the carrying out of this plan if it would be desirable for him to have an interview with the admiral it could be effected in the manner pointed out.

Q. Then, do I understand you to say that the suggestions made by you and quoted above, to which you say Mr. Messa assented, were based upon the assumption that his vessel was going to depart anyway, without regard to your wishes in the matter?

A. My suggestion to Mr. Messa that he be at a certain point at a certain time was based upon the assumption that he could and would readily be there about the time specified in the natural course of carrying out his plans. The suggestion was not that Mr. Messa should follow a certain course for his vessel, but that in the execution of his own plans he might conveniently be at that point at the time specified.

Q. But the suggestions to which you say he assented were made by you under the assumption that the trip would be made anyway, without regard to your wishes in the matter?

A. I will try and make myself clear. Mr. Messa's plan was to go to Cuba and return to Jamaica, and in the course of that trip he would be in the neighborhood of a certain place at a certain time. The suggestion on my part was that being near that certain place at that certain time, the point being in the open ocean must necessarily be fixed. My suggestion related only to the exact point at sea where he could conveniently be. In other words, I never made any suggestion to Mr. Messa to make any plans whatever as a part of any agreement with me.

Q. What I desire to know is, if you made these suggestions which

were quoted in a former question by me under the assump-
128 tion that Mr. Messa had decided to make this trip of his own accord and without any assent or suggestion from you that it should be made?

A. I think I have already said that; if not, I do say so now. The point which I wanted to make myself clear was that the only suggestion from me was that Mr. Messa in the course of a trip be in a certain neighborhood at a certain time. We would agree upon an exact point at sea upon which he would fix as the point at which he would naturally be at that time. As I have said before, I had nothing whatever to do with Mr. Messa's plans; made no suggestion whatever in respect to them.

Q. Then you understood this vessel would leave at the time stated in your letter of June 23rd for Manzanillo, and that this course had been resolved upon by Mr. Messa independently of any suggestions by you, and that you made these suggestions in view of the fact that the trip was going to be made?

A. Exactly. I understood from Mr. Messa that he was to go to Manzanillo with his cargo. If he succeeded in landing his cargo, it would take him a certain time to do it; that having landed his cargo, he would come out and return to Jamaica; that upon his return to Jamaica he would be in the neighborhood of Cape Cruz about the 30th day of June. Understanding that those were his plans, the suggestion on my part was that, being in the neighborhood of Cape Cruz, if the admiral desired to see him, an exact point upon the ocean would have to be fixed where a vessel could pick him up. That was the sum and substance of my suggestion, and I had nothing whatever to do with the making of his plans.

Q. Not having notes of your testimony before me yesterday, my recollection is not clear. I wish you to state, if you have not already done so, whether or not you advised Mr. Messa that the land-
ing of the cargo, namely, 1,100 barrels of flour and other ar-
129 ticles, would not be permitted, in your opinion.

Mr. PUTNAM: I object to that; that already, I think, has been gone into.

A. I stated in my examination yesterday that I did tell Mr. Messa if his vessel was stopped that under no circumstance would, in my opinion, the admiral permit such a cargo to be landed in any port in Cuba.

Q. In your letter of June 23rd you endeavored to make arrangements for a meeting between Captain Sampson and Mr. Messa. At whose instance was this arrangement attempted? In other words, did you desire Messa to meet Sampson, or was it Messa's desire to have you arrange a meeting for him?

A. It was Mr. Messa's desire.

Q. Then do I understand you to say that the meeting which was planned by you was made at the solicitation and suggestion of Mr. Messa?

A. It was.

Further cross-examination by Mr. PUTNAM:

Q. In your interview with Mr. Beattie and Mr. Messa did you tell either of them that the vessel might be ostensibly detained, or that there would be an apparent capture, so as to disarm suspicion, as stated in the letter of June 23rd, Exhibit "B"?

A. I could not state to Mr. Beattie or to Mr. Messa what the admiral's actions might be. I did state to Mr. Beattie and to Mr. Messa that I would suggest to the admiral that he could follow that course if he so desired for the purpose of not compromising Mr. Messa.

Q. What did you understand would compromise Mr. Messa in meeting the admiral—how did you understand he would be compromised in meeting the admiral?

A. Mr. Messa desiring to go to a port in Cuba and transact business, and his vessel being well known in those southern ports,
130 particularly the port of Santiago, if he sought the admiral directly for the purpose which he had in view, it would destroy whatever hopes he might have of entering such ports and doing the business which he contemplated, because the admiral's fleet being in full view of the harbor of Santiago, his approach on an apparently friendly intercourse would naturally be observed from the shore.

I desire in justice to myself and in closing my testimony to make this statement: that in every action of mine with reference to the case of the "Bonita Estenger" I was actuated by good faith and a desire to aid Mr. Messa, and any statement of Mr. Messa, either direct or by implication, that I ever at any time or under any circumstances was guilty of bad faith towards him, or used any means whatever to inveigle his vessel within the reach of the American naval force for the purpose of effecting her capture, is absolutely and unqualifiedly false, without any reservation upon my part whatever.

Mr. PUTNAM: And did you expect when the vessel sailed that she would be captured, at the time that you wrote the letter of June 23rd?

Mr. STRIPLING: I object to that question on the ground that it is not material or pertinent.

Mr. DENT: At the time that I wrote the letter of June 23rd the only opinion which I had was that in no event would Mr. Messa's vessel be allowed to enter a port in Cuba if she was stopped by an American cruiser. The letter was written for the purpose of securing the good graces of the admiral towards Mr. Messa, but
131 whatever effect the letter might have upon the admiral was entirely beyond any forecast or opinion of mine.

Original test affidavit of Enrique de Messa, referred to by the witness yesterday, marked "E—G. M. R." for identification.

Deposition closed.

(S'g'd) LOUIS A. DENT.

DISTRICT OF COLUMBIA, }
*County of Washington,* } *ss:*

On this 2nd day of November, 1898, personally appeared before me, a notary public in and for the District of Columbia, Louis A. Dent, who subscribed his name and swore to the proceeding testimony as being the truth, the whole truth, and nothing but the truth.

[SEAL.] (S'g'd) JOS. P. RUDY,
*Notary Public, D. C.*

132 C—G. M. R.

Enclosure No. 4, despatch No. 170, dated 10th July, 1898.

(Copy.)

U. S. FLAGSHIP NEW YORK, 1ST RATE,
OFF SANTIAGO DE CUBA,
CUBA, *June* 25, 1898.

SIR: I have received your three letters, dated respectively June 14th, 21st, and two of the 22nd. I am making every effort to put a stop to the blockade-running on the south coast of Cuba. There is a large vessel with a heavy battery at Cape Cruz and one at Cienfu-gos. The vessel at Cienfu-gos will soon be re-enforced by the "Detroit," which also carries an able battery, and between the two positions there are divided four auxiliary cruisers, making seven in all, and two more will be added to this number immediately.

2. As soon as the vessels of light enough draft are available I hope to establish an effective blockade of the space between Cape Cruz and San Antonio.

3. I do not understand how the steamship "Adula" has several times obtained a permit to visit Cienfu-gos. I shall give instructions that if she attempts to either pass in or out again that she will be seized. I am greatly obliged to you for the information heretofore furnished regarding the attempts to elude the blockade and sent to me from time to time. Any further information upon this subject will be very thankfully received.

Yours sincerely,

(S'g'd) W. T. SAMPSON,
*Rear Admiral U. S. Navy, Commander-in-Chief*
*U. S. Naval Force, North Atlantic Station.*

Mr. Louis A. Dent, U. S. consul, Kingston, Jamaica.

133 D—G. M. R.

Enclosure No. 5, despatch No. 170, dated 10th July, 1898.

(Copy.)

KINGSTON, JAMAICA, *June* 23, 1898.

Captain W. T. Sampson, U. S. N., acting rear admiral, etc., etc., etc., off Santiago de Cuba.

DEAR SIR: I enclose to you herewith a plan of the harbor of Santiago and also a map of the province of the same name. The former was made from a special survey in 1896, made by a government engineer of Santiago and one of the best pilots in the employ of Gallego, Messa & Co., steamship owners of Santiago, under the direct supervision of Mr. Messa, who contemplated erecting the wharf property shown on the detail attached to the plan. The map of the province is as old as 1880, but it is a government map abstracted from the government archives.

These plans were given to me by Mr. Messa himself, who is here on his steamer, the Bonita Estenger, of which I have written to you previously. Besides this, I had a long talk with Mr. Messa, and made some inquiries of him in order to verify certain impressions of my own. I have personally ridden horseback, over the mountains partly, from Santiago to Guantanamo, and I know something of the country in that neighborhood. I have seen it persistently stated recently that our authorities are informed there is a railway from Santiago to Guantanemo. At the time I was in this neighborhood there was no such railway. There was then a railway from Santiago nearly up to a small place called Sabanilla, and there was a railway from Guantanemo northerly into the interior to
134 an estate called Soledad, and another branch to a small place called Jamaica, but there was no railway towards Santiago. There was a poor Cuban road from Santa Catalina (Guantanamo) to Sabanilla, which still exists, Mr. Messa informs me, and could be shortly transformed into a passable military road.

Mr. Messa informs me that the conditions have not changed in respect to these connections since I was there.

On the government map enclosed I have marked with lead pencil the two railway branches from Guantanamo referred to by me.

With respect to the pilot, Nunes, sent to you by me by order of the State Department and subsequently returned by Commodore Schley, and then taken back to the fleet by Captain Cotton, I should be glad to have some information as to his whereabouts. I have carefully investigated his character and ability and I am quite sure that the man was misjudged. His friends here (and some of them are the men who carried through the Rowan expedition for me) are stren-ous in upholding his character and ability. Mr. Messa, who last spoke to me about him, stated that he is perhaps the best pilot for Guantanamo and quite good for Santiago, but he speaks more highly of the pilot of the Purissima Concepcion, who is now here, compelled to leave the ship for having been my chief in-

formant about her. Mr. Messa recommends him as one of the best pilots for Santiago and the entire south coast, west of Batabano, and he speaks of him in the highest terms. The man has offered his services to me and the Junta people here are willing to stand sponsor for him. He seems to be an intelligent white man, and if you can make use of him I shall be very glad to send him to you.

Mr. Messa also calls my attention to a fine little harbor
135 about two miles to the westward of Santiago harbor entrance, where you can get 10 feet of water close up to the shore for the landing of troops. He says Nunes knows the spot perfectly.

Of Messa I know nothing personally. He is a member of this large firm at Santiago, the owner of considerable properties. From my two interviews with him I should judge him to be a man of no special prejudices, a business man, content to go along as quietly as possible, a man of intelligence, about 60 years of age. He offered voluntarily, as he offered these plans to me, to give any information that he could relative to the country around Santiago without compromising himself, and he evidently expects nothing in return but the prospect of peace and the resumption of his business. From his long residence in that country he would no doubt be in a position to give much information to yourself and General Shafter.

His vessel leaves tomorrow night for Montego bay for Manzanillo, and he has assented to my suggestion as follows: When he leaves Manzanillo he will be presumed to go to Trinidad to bring refugees to Jamaica, but he will come outside of the keys and stand off twenty miles from Cape Cruz due west, where a cruiser can pick him up, ostensibly detain his vessel for examination, take her to the fleet, where you can interview him to any extent you may desire, if you see fit. The object of apparently capturing him will be to disarm suspicion on the part of the Spaniards, who would well know his vessel.

If you care to avail yourself of this plan you could send a vessel to the point named Wednesday night. Messa has made the appointment for that place Thursday morning, June 30.

136 You quite understand that in dealing with those people one is always more or less liable to imposition. I therefore make no recommendation of Messa to you. I simply give you the opportunity to get information, perhaps of value, and to judge of the man for yourself, as I have done.

As to the cargo of this ship, it will go in the name of a British subject, under the British flag; but I am told privately by the president of the local junta, who has performed valuable services for me, that the proceeds of this cargo are to be forwarded to the Cuban government and troops through the Cuban agent in Manzanillo. Mr. Lay on that ground asked me to give him a letter to any cruiser that might be met, but I, of course, declined. Having regard to his services to me, however, I told him that I would advise you privately of his statement, and you could, of course, use your judgment as to whether you would pass the ship under the circumstances. I rather believe his statement that this is the fact, because

he avers that to avoid the provision- being seized for the troops they are to be sold before being landed from the ship.

I have the honor to remain, sir, your obedient servant,

(S'g'd) LOUIS A. DENT.

Messa has the soundings to accompany his plan of Santiago, but they are in Cuba. I will endeavor to reach him by telegraph and impress my request casually made to bring them back with him, if he can get them, though I fear they are in Santiago, where his home is.

137 A—G. M. R.

Enclosure No. 1, despatch No. 170, dated 10th July, 1898.

(Copy.)

KINGSTON, JAMAICA, *June* 21, 1898.

Captain W. T. Sampson, U. S. N., acting rear admiral, etc., etc., etc., off Santiago.

DEAR SIR: I regret very much the failure to take the Purissima Concepcion. She evidently took the Manzanillo course and then up inside the keys to Zaza (Tunas), where she was Saturday, and unless Commander Bronson, who was off Cienfu-gos on Sunday night has taken her, she has made Cienfu-gos by night. As before notified, these vessels are all destined for Manzanillo. The Bonita Estenger, under British flag, sails tomorrow morning, I believe. In view of my failure to prevent the departure of these ships, I shall content myself with informing you in the future when in a position to do so.

Blanco's subsecretary, Virgilio Lopez Chaves, 1st lieutenant Spanish navy, arrived here today on Adula from Cienfu-gos. I am informed that he has $300,000 for the purchase of supplies. He will endeavor to carry a large cargo to Manzanillo, where it will be landed at Ce-vera's disposal. He may use the Adula, in which case I believe you would be warranted in taking her, she having gone into Cienfu-gos, a blockaded port, knowing it to be blockaded. You may know she previously went there twice under permit to pass the blockade.

I can only urge upon you, if you have the vessels to spare, to cover the bight west of Cape Cruz continuously, and there will be ample results, I believe. The Concepcion will return here
138 from Cienfu-gos, probably the same course, and she should be taken on her return, as the next time she gets here she will probably be prepared to meet the requirements of the British merchant shipping act and change her flag.

I have the honor to remain, sir, your obedient servant,

(S'g'd) LOUIS A. DENT,
*U. S. Consul.*

P. S.—The Concepcion passed out of this port as Commander Emory was coming in, Thursday morning last.

B—G. M. R.

Enclosure No. 2, dispatch No. 170, dated 10th July, 1898.

(Copy.)

KINGSTON, JAMAICA, *June* 22, 1898.

Captain W. T. Sampson, U. S. N., acting rear admiral, etc., etc., etc., off Santiago.

DEAR SIR: Since writing to you last night I learn the schooner Emanuel Raoul will leave today for Manzanillo. This is the Haytien boat with cargo of provisions. I learn confidentially that the Haytien government desires to get this vessel, as she has practically run away from her owners and been trading around Cuba for a year. It is also alleged, though I cannot vouch for it,
139 that she has one or two Spanish officers in charge. Her cargo of provisions is undoubtedly for Spanish destination, and I feel quite certain Spanish owners. The British schooner Nickerson is also bound for Manzanillo. Bonita Estenger comes later.

I remain, sir, your obedient servant,
(S'g'd) LOUIS A. DENT,
*U. S. Consul.*

It is hereby stipulated and agreed by and between co-nsul for libellant and claimant that the foregoing testimony of Louis A. Dent may be read in evidence, subject to exceptions noted.

J. N. STRIPLING,
*U. S. Attorney.*
G. BOWNE PATTERSON,
H. PUTNAM,
*Proctor- for Cl'm't.*

Filed Nov. 4, 1898.

E. O. LOCKE,
*Clerk U. S. Court.*

140 United States District Court, Southern District of Florida.

THE UNITED STATES OF AMERICA
*vs.*
BRITISH STEAMSHIP "BENITO ESTENGER." } Prize.

I, Eugene O. Locke, clerk of said court, hereby certify that the foregoing pages, numbered from one to one hundred and thirty-nine, inclusive, are a true transcript of the record of said court in the said entitled cause, made up in pursuance to rule 52, admiralty rules of practice.

In testimony whereof I have hereunto set may hand and affixed the seal of said court, at Jacksonville, in said district, this fifth day of January, A. D. 1899.

[Seal District Court of the United States, Southern District of Florida.]

EUGENE O. LOCKE, *Clerk.*

141 UNITED STATES OF AMERICA, *ss:*

To The United States of America, Greeting:

You are hereby cited and admonished to be and appear at the Supreme Court of the United States, to be holden at Washington, on January 14, 1899, pursuant to an appeal filed in the clerk's office of the district court of the United States for the southern district of Florida, wherein Arthur Elliot Beattie, claimant of the steamship "Benito Estenger," is appellant from a decree entered December 7th, 1898, in said district court, to show cause, if any there be, why the judgment in the said decree mentioned, entered on the seventh day of December, 1898, should not be corrected and speedy justice should not be done to the parties on that behalf.

Witness the Honorable James W. Locke, judge of the said court of the United States, this 16th day of December, in the year of our Lord one thousand eight hundred and ninety-eight.

[Seal District Court of the United States, Southern District of Florida.]

JAMES W. LOCKE,
*Judge U. S. District Court, Southern District of Florida.*

Attest: E. O. LOCKE, *Clerk.*

Service accepted.

J. N. STRIPLING, *U. S. Att'y.*

Dec. 17th, 1898.

[Endorsed:] S. S. "Benito Estenger" *v.* United States. Citation. 17268.

[Endorsed:] Prize. S. S. "Benito Estenger." Apostles from U.S. district court, southern district of Florida.

Endorsed on cover: File No., 17,268. S. Florida D. C. U. S. Term No., 192. The Steamship "Benito Estenger," Arthur Elliot Beattie, claimant, appellant, *vs.* The United States. Filed January 20th, 1899.

# THE SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1899.

E STEAMSHIP "BENITO ESTENGER," ARTHUR ELLIOTT Beattie, Claimant, Appellant,
*v.*
THE UNITED STATES.
No. 192.

EAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF FLORIDA.

## pulation to Add Copies of Certain Spanish Documents and Translations Thereof to the Record.

t is hereby agreed between The United States, the naval captors, the claimant that the following copies of documents, being part hose found on board the *Benito Estenger* and sent up by the court ow as original exhibits, shall be added to the record with the ompanying translations thereof, which are admitted to be accu-

anuary 22, 1900.

HENRY M. HOYT,
*Assistant Attorney General, for the United States.*
JOS. K. McCAMMON,
JAMES H. HAYDEN,
*Of Counsel for Captors.*
HARRINGTON PUTNAM,
*Advocate for Claimant.*

Comandante de Marina de este Puerto:

. Genaro Pasarón y Fernández, capitán del vapor Español enito Estenger," á U. S. suplica se sirva concedirle permiso para ir al varadero el buque de su mando para limpiar y pintar sus los, gracia que espera merecer de U. S. en Cienfuegos á 22 de il de 1898.

GENARO PASARÓN.

oncedido.
[Signature illegible.]
[Seal Captain of Port's Office.]

[*Translation.*]

tain of the port of this port:

on Genaro Pasarón y Fernandez, master of the Spanish steamer nito Estenger," begs you to be pleased to grant him permission

to put on the ways the vessel under his command to clean and paint its bottom, a favor which he hopes to merit from you.

Cienfuegos, April 22, 1898.

GENARO PASARÓN.

Granted.

[Signature illegible.]

[Seal Captain of Port's Office.]

[Formal parts of telegraph blanks omitted.]

Cuba Submarine Telegraph Company, Limited.

CIENFUEGOS, 26 *Ab'l de* 1898.

Santiago de Cuba; palabras, 26; fecha, 26; hora, 7.30.

Cacicedo, para Pasaron, Cienfuegos:

Haga uso patente de esa si necesario llegando la pedida habana reténgala abordo avie cuando este listo y espere ordenes.

GALLEGO.

[*Translation.*]

Cuba Submarine Telegraph Company, Limited.

CIENFUEGOS, 26 *April*, 1898.

Santiago de Cuba; words, 26; date, 26; hour, 7.30.

Cacicedo, for Pasaron, Cienfuegos:

Make use of "patent" from that port if necessary should that requested at Havana arrive retain it on board advise when ready and await orders.

GALLEGO.

[The word *patente* in these cablegrams is susceptible of different meanings. Joined with different words, it may refer to the royal patent or register, to a bill of health, to a local clearance document, or to a sea pass or sailing license from the central authority.]

Cuba Submarine Telegraph Company, Limited.

CIENFUEGOS, 30, 4 *de* 1898.

Santiago de Cuba; palabras, 14; fecha, 30; hora, 4.45.

Cacicedo, C'f'gos:

Digan Pasarón consideramos salida de esa peligrosa que espere nuestras ordenes.

GALLEGO.

["Gallego" is stated to be the telegraphic address of the firm of Gallego, Messa & Co.]

10643

[*Translation.*]

Cuba Submarine Telegraph Company, Limited.

CIENFUEGOS, *April* 30, 1898.

Santiago de Cuba; words, 14; date, 30; hour, 4.45.

Cacicedo, C'f'gos:

Tell Pasaron we consider sailing therefrom dangerous to await our orders.

GALLEGO.

Cuba Submarine Telegraph Company, Limited.

CIENFUEGOS, 30 *de Abril*, 1898.

Santiago de Cuba; palabras, 18; fecha, 30; hora, 8.40.

Cacicedo para Pasaron, Cienfuegos:

Telegrafeado Messa quien le trasmitira ordenes. Diga Posada cuando llegue patente entregue Cacicedo.

GALLEGO.

[*Translation.*]

Cuba Submarine Telegraph Company, Limited.

CIENFUEGOS, *April* 30, 1898.

Santiago de Cuba; words, 18; date, 30; hour, 8.40.

Cacicedo, for Pasaron, Cienfuegos:

Have telegraphed Messa who will give you orders. Tell Posada when patent arrives to deliver to Cacicedo.

GALLEGO.

30 ABRIL, —8.

Sr. Dn. Enrique Messa, Habana.

MUY SOR. MIO: Listo desde ayer de la carena que vine á hacer á esta con el vapor "Benito Estenger," telegrafié á la casa de Stgo. de Cuba, que me contesto esta mañana en la siguiente forma: "Telegrafeado Messa quien le trasmitirá ordenes. Diga Posada cuando llegue patente entregue Cacicedo. Gallego."

Quedo pues en espera de sus ordenes, debiendo participarle para su gobierno que este puerto se encuentra bloqueado por la escuadra enemiga, y ayer apresaron el "Argonauta," de la empresa de Menendez y C$^{a}$.

En esta situación creo lo mas prudente permanecer aqui hasta que cambien las presentes circunstancias y asi también me lo han aconsejado estos Sres. Cacicedo y C$^{a}$., consignatarios en este puerto.

Espero sus instrucciones, y me reitero de vd. aff$^{o}$ S. S. Q. B. S. M.

GENERO PASARÓN.

[*Translation.*]

30 APRIL, 1898.

Senor Don Enrique Messa, Havana.

MY DEAR SIR: Ready since yesterday from the cleaning which I came to do here of the steamship "Benito Estenger." I telegraphed the firm at Santiago de Cuba, which replies this morning in the following form: "Have telegraphed Messa who will give you orders. Tell Posada when patent arrives deliver to Cacicedo. Gallego."

I am then awaiting your orders, though I ought to inform you for your guidance that this port is blockaded by the enemy's squadron, and they yesterday captured the "Argonauta" of the firm of Menendez & Co.

In this situation I deem it more prudent to remain here until present conditions change, and I have also been so advised by these Messrs. Cacicedo & Co., consignees in this port.

I await your instructions and reiterate myself

Yours, etc., GENARO PASARÓN.

HABANA, 30 *Abril*, 1898.

Sor. Don Genaro Pasarón, Cienfuegos.

MUY SOR. MIO: Con esta fecha he recibido de mi casa de Cuba el siguiente cablegrama: "Conveniente regreses más pronto posible. Mucha responsabilidad dbdo. actuales circunstancias. Benito en Cienfuegos. Puedes aprovechar cableando á Pasaron espere. Le aviso esté á tus ordenes. Si no vienes avisale salga no perder mas tiempo."

Por lo q$^{e}$ comprendo en Stgo. de Cuba no se conoce bien el verdadero estado de las casas y se juzga q$^{e}$ aun puede salirse, de ese puerto p$^{a}$ aquel, sin esposición.

No obstante, espere vd. q$^{e}$ yo le dé aviso para efectuar su salida aun q$^{e}$ esta estará demorada todo el tiempo que exista el bloqueo.

Estoy aqui gestionando una operación de crédito sobre el Gobierno q$^{e}$ deberá terminarse el lunes y entonces le comunicaré lo q$^{e}$ lo q$^{e}$ he de hacer.

He tenido noticias del apresamiento del "Argonauta" lo q$^{e}$ hace comprender q$^{e}$ ese puerto está completamente cerrado.

Sin más por hoy quedo de vd. atto.

S. S. Q. B. S. M. ENRIQUE DE MESSA.

[*Translation.*]

HAVANA, *April* 30, 1898.

Señor Don Genaro Pasarón, Cienfuegos.

MY DEAR SIR: Under this date I have received from my house in Cuba the following cablegram: "Advisable you return soon as possible. Great responsibility due to present conditions. Benito at Cienfuegos. You may profit by cabling to Pasarón to wait. I advise him to be at your orders. If you do not come, advise him to go and not lose more time."

From what I understand, the true condition of things is not known in Santiago de Cuba, and it is thought that it is still possible to go from your port to that without running any risk. Nevertheless you wait until I advise you to effect your sailing, even though it shall be delayed during the whole time the blockade exists.

I am here working at an operation of credit on the government, which will be closed on Monday, and I will then communicate to you what I am to do.

I have had news of the capture of the "Argonauta," which makes it evident that the said port is completely closed.

Having nothing further for the present, I remain—

Yours, etc., ENRIQUE DE MESSA.

Cuba Submarine Telegraph Company, Limited.

CIENFUEGOS, 2 *de Mayo de* 1898.

Santiago de Cuba; palabras, 17; fecha, 2; hora, 10.10.

Cacicedo, C'fuegos:

Agradeceremos liquiden nómina Abril Benito informen capitán desde ayer quedan todos á medio sueldo.

GALLEGO.

[*Translation.*]

Cuba Submarine Telegraph Company, Limited.

CIENFUEGOS, *May* 2, 1898.

Santiago de Cuba; words, 17; date, 2; hour, 10.10.

Cacicedo, C'fuegos:

We will thank you to pay April list Benito inform captain from yesterday all will be on half pay.

GALLEGO.

CIENFUEGOS, 11 *Mayo*, 1898.

Sr. Don Sandalio Fer$^{dez}$ Cuervo, Habana.

MI DISTINGUIDO AMIGO: Con una hora de atraso llegué esta tarde á las 6½ causando la demora el movimiento de tropa en trés trenes q$^{e}$ se dirigian p$^{a}$ esa capitál.

He hablado immediatamente con el capitán del "Benito Estenger" y quedado de acuerdo p$^{a}$ ver mañana á primera hora al Comandante de Marina de este puerto respecto á q$^{e}$ autorize la salida p$^{a}$ Stgo. de Cuba si antes no puede arreglarse lo de abanderamiento. El cable nos pone en condiciones de intentar llevar á viás de hecho lo de pedir al Ministro de Costa Rica en Washington p$^{a}$ q$^{e}$ obtenga del Gobno. Am$^{o}$. q$^{e}$ autorize al consul p$^{a}$ q$^{e}$ con un pasavante expedido p$^{r}$ el mismo alli (Habana) pueda el "Benito Estenger" enarvolar la bandera Costaricense é ir, á terminar el abanderamiento á un puerto de esa pequeña republica.

Con este fin será necesario q^e Dn Samuel dirija el cablegrama siguiente:

Ministro Costa Rica. Washington. Para dirijirme fuera de esta Isla y á falta de buque de la nación que represento he adquirido en compra un vapor de 300 toneladas, nacionalidad Española, que deseo proveer de pasavante para ir á terminar abanderamiento a Puerto Limón. Samuel Giberga obtenga autorización de ese Gobierno.

[*Translation.*]

CIENFUEGOS, *May* 11, 1898.

Señor Don Sandalio Fernandez Cuervo, Havana.

MY DISTINGUISHED FRIEND: I arrived this evening at 6.30, an hour behind time, the delay being caused by the movement of troops on three trains going to that capital.

I immediately talked with the captain of the "Benito Estenger" and agreed to see the captain of the port of this port tomorrow the first thing regarding his authorizing clearance for Santiago de Cuba, if we cannot arrange the matter of flag-changing before.

The cable puts us in the way of attempting to carry into effect this asking the minister of Costa Rica in Washington to secure from the American Government authority for the consul with a safe conduct issued by himself there (Havana) for the "Benito Estenger" to raise the Costa Rica flag and go to a port of that small republic to finish the flag transfer.

To this end it will be necessary for Don Samuel to send the following cablegram: Minister Costa Rica, Washington: In order to leave this island, and in view of the lack of a vessel of the nation I represent, I have acquired by purchase a steamship of 300 tons, Spanish nationality, which I desire to provide with a safe conduct to go and conclude flag transfer at Puerto Limon. Samuel Giberga. Obtain authority from that government.

[Spanish stamp, cancelled Manzanillo, May 21, 1898.]

Don José T. Mariño Raventos, oficial quinto contador de la Administración Subalterna de Hacienda de esta Ciudad de la que es Jefe Don José Badia Segvera:

Certifico que previas las formalidades de ordenanza se despacho por esta Oficina en el dia de hoy con destino á Stgo. de Cuba el vapor nacional "Benito Estenger" su capitán José Pasarón en lastre.

Y á los fines prevenidos expido la presente en Manzanillo á veinte y uno de Mayo de mil ochocientos noventa y ocho.

JOSÉ T. MARIÑO RAVENTOS.

Vto. Bno.
El Admor. BADIA.

[Seal of Branch Office of the Treasury.]

10645

[*Translation.*]

Don José T. Mariño Raventos, clerk fifth class, cashier of the branch office of the treasury at this city, of which Don José Badia Segvera is chief:

I certify that after the prescribed formalities this office clears on this day, with Santiago de Cuba as destination, the national S. S. "Benito Estenger," her captain José Pasarón, in ballast.

And for all prescribed purposes I issue these presents in Manzanillo on the twenty-first day of May of eighteen hundred and ninety-eight.

JOSÉ T. MARIÑO RAVENTOS.

Correct.

BADIA, *Chief.*

[Seal of the Branch Office of the Treasury.]

[Endorsed:] File No., 17,268. Supreme Court U. S., October term, 1899. Term No., 192. The Steamship "Benito Estenger," &c., app't, *vs.* The United States. Stipulation and addition to record. Filed Jan. 22, 1900.

IN THE

# Supreme Court of the United States

**OCTOBER TERM, 1899.**

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*No. 192. Prize.*

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THE STEAMSHIP BENITO ESTENGER

*vs.*

THE UNITED STATES.

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## Further Stipulation as to the Term "Patente" in Certain Spanish Documents.

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Referring to pages 2 and 3 of the Spanish documents and translation added to the record herein by stipulation dated January 22, 1900, it is further agreed—

That the Spanish word "patente" is sometimes used in commercial and maritime parlance for a marine paint for ships' bottoms, and it is stated by Mr. Messa that it was so used in these cablegrams.

This stipulation may be submitted to the justices of this court as soon as printed by the clerk.

Dated February 10, 1900.

HENRY M. HOYT,
*Assistant Attorney General, for the United States.*
JAMES H. HAYDEN,
*Of Counsel for Captors.*
HARRINGTON PUTNAM,
*Advocate for Claimant.*

[Endorsed:] File No., 17,268. Supreme Court U. S., October term, 1899. Term No., 192. The Steamship Benito Estenger, &c., *vs.* The United States. Stipulation as to certain Spanish documents. Filed February 12, 1900.

# In the Supreme Court of the United States.

OCTOBER TERM, 1899.

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| THE STEAMSHIP BENITO ESTENGER, Arthur E. Beattie, claimant, appellant, *v.* THE UNITED STATES. | No. 192. |
| THE UNITED STATES, APPELLANT, *v.* THE CARGO OF THE SPANISH BARK Carlos F. Roses, Kleinwort Sons & Co., claimants. | No. 243. |

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## MOTION TO ADVANCE.

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### THE BENITO ESTENGER.

This is an appeal by the claimant from a decree of the district court of the United States for the southern district of Florida condemning the vessel as prize.

The vessel, prior to June 8, 1898, was the property of Enrique de Mesa, a subject of Spain and resident of

Cuba. It had been engaged in trading with the island of Cuba, and more particularly between Kingston, Jamaica, and Manzanillo, Cuba.

On the 9th of June a bill of sale was made by Mesa to Arthur E. Beattie, claimant, a British subject; and, in compliance with the requirements of British law governing registration, it was registered as a British vessel at Kingston. After this transfer its trade was continued as before, and under the same control, Mesa remaining on board and in charge and the same Spanish captain continuing, although nominally an English officer was engaged.

The claimant insisted on the *bona fides* of the transfer and upon his right to the vessel as a subject of a neutral power.

An order was granted for taking further proof, and upon such proof a decree of condemnation was entered, from which an appeal has been taken.

The condemnation proceeded on the ground that the transfer of ownership *flagrante bello* was not *bona fide*, the depositions taken failing to show any consideration for it. The vessel was held to be enemy property engaged in commerce on the high seas and properly subject to capture as prize.

### THE CARGO OF THE CARLOS F. ROSES.

This is an appeal by the United States from a final decree of the United States district court for the southern district of Florida releasing the cargo of the vessel on the ground of neutral ownership. The libel alleges that the vessel was captured on May 17, 1898, by the

U. S. S. *New York*. Its voyage was from Barcelona to Montevideo, where the cargo was discharged. It was then loaded for Havana, March 13, 1898, with jerked beef and garlic, and was steering for Havana when captured.

The vessel was condemned and no appeal has been taken from that decree. The same decree gave leave to take further proof as to the ownership of the cargo, and ordered the sale of the vessel and cargo. The latter brought $16,750. After proof taken, a decree was entered allowing the claim of the present appellees and ordering payment to them of the proceeds. The United States appealed.

The cargo was consigned to a Spanish subject in Havana, but the claimants, who were subjects of Great Britain, had accepted and paid bills of exchange for £6,297 upon the cargo, and the bills of lading were sent to them as security for their advances and by them sent to their agent in Havana for collection from the cargo. It was held that this constituted the claimants the owners of the cargo until their advances were satisfied.

The United States, appellee in the first case and appellant in the second, respectfully moves the court to advance these causes on the docket and assign them for early hearing at the present time for the following reasons:

First. It is a matter of public concern and general interest that there should be speedy adjudication of proceedings in prize, in order that the title to property claimed as prize and the rights of captors may be finally and promptly determined.

Second. It is of international importance that rulings on the questions of prize law involved should be announced and become a part of the general public law on the subject at as early a date as may be consistent with the convenience of the court.

Third. In both cases claims of neutrals are made, and consequently regard for our obligations to friendly powers moves the United States to seek a speedy settlement of the controversy.

As these cases may to some extent be affected by the decisions to be rendered in the prize cases already heard by the court, it is suggested that they be assigned for argument at a date subsequent to the date of decision of the cases now before the court, provided such assignment is consonant with the court's convenience and views.

Notice of this motion has been duly served upon the respective opposing counsel.

JOHN K. RICHARDS,
*Solicitor-General.*

No. 192.

Brief of Putnam for Appellant

Office Supreme Court U. S.
FILED
JAMES H. McKENNEY,
Clerk.

Filed Jan. 5, 1900.

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# SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1899

No. 192

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The Steamship Benito Estenger

*against*

The United States of America

} Prize

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## BRIEF FOR THE CLAIMANT

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HARRINGTON PUTNAM

Advocate

# SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM 1899.

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| The steamship Benito Estenger, Arthur Elliott Beattie, claimant, appellant, against The United States of America. | Prize. |

Appeal from a sentence of condemnation of the United States District Court for the Southern District of Florida.

The *Benito Estenger,* a steamship of 370 tons gross and 244 net register, was captured by the United States auxiliary cruiser *Hornet* between 2 and 3 A. M. of Monday, June 27, 1898. She was brought into Key West and there libelled as prize of war. A sentence of condemnation was entered on December 7, 1898. The grounds of this decree appear in the opinion of the Judge which is printed in the appendix to this brief.

It appeared that the steamer had been built some fifteen years ago at Philadelphia, that she had been owned by Enrique de Messa, of the firm of Gallego, Messa & Co., of Santiago de Cuba, all of whom were Cubans. Before the war the *Benito Estenger* had been running coastwise and had been under the Spanish flag. Mr. Messa had returned from Europe in April. He had been an adherent of the Cuban cause. Naturally he was anxious to protect this vessel from interference by the Spanish. He swore in his test affidavit:

"That the said vessel up to about April 4th, 1898, had been running coastwise and under the Spanish flag; that about that time deponent came from Europe—he being a prominent sympathizer of the Cuban cause and many of his relatives being prominently connected with the Cuban insurgents—and having lost a great deal of his property during the Cuban war, and fearing that the said *Benito Estenger* might be seized by the Spanish Government and that he might thus lose her—on the second of June he got said vessel out of Cuba and into Jamaica, where he arrived June 4th, with intention of disposing of her immediately, that he placed the vessel in the hands of Mr. Orrett, an attorney and broker of Kingston, at the same time informing him

that he thought the vessel could be sold to the firm of Beattie & Co., whom he learned before leaving Cuba needed a larger vessel than the one already owned or used by them (the *Greenan Castle*) for bringing supplies from Jamaica to Cuba for a large number of Cuban families living on the sugar estate of the said Beattie & Co., near Manzanillo." (Record, p. 21.)

After arrival at Kingston the vessel was transferred to Arthur Elliott Beattie, a British subject temporarily residing at Kingston and a member of the firm of Beattie & Co, all British subjects, who have large estates at Media Luna, near Manzanillo.

The bill of sale is dated June 9, 1898 (Record, p. 48).

It was duly deposited with the Registrar of Shipping and a declaration of ownership made (p. 49), whereupon a formal British register for the steamer was issued.

Mr. Beattie went on board, took possession, and thereafter the steamer flew the British flag.

It did not appear how the consideration for this sale was paid, except that Mr. Messa had previously been indebted to Mr. Beattie and that a large part of this consideration was credited on this indebtedness (Messa, p. 22).

Mr. Beattie himself declined to state how the payments were made.

It will not be contended upon this appeal that all the interest of Mr. Messa in the *Benito Estenger* ceased on June 9, 1898. The transfer was obviously made to protect the steamer as neutral property from Spanish seizure. That Mr. Messa, however, still retained a beneficial interest after this sale and transfer of flags, and continued to act for the vessel as supercargo, has not been disputed.

The steamer loaded a cargo of flour and breadstuffs for Manzanillo. She left Kingston on June 23d, arrived at Manzanillo on the 25th, and landed her cargo. Some refugees had been booked as passengers for Jamaica, but the steamer was prohibited from taking them. She proceeded to sea at 2 A. M. of June 27th. Soon after, when off Cape Cruz she was captured by the *Hornet,* as already stated.

The decisive element of this case distinguishing it from other captures of Cuban vessels has not been stated. It was the employment, mission, and services to the naval authorities that the *Benito Estenger* had been procured to undertake through the active efforts of consul Dent of Kingston.

## Consul Dent's Connection with the Voyage of the Benito Estenger.

The attention of the Court is specially requested to the active intervention of the official representative of the United States, and the subsequent breach of faith on the part of the naval authorities, in making this capture, after benefiting by the arrangements in their behalf with the owner of the vessel.

In the test-affidavit by Mr. Messa, sworn to on the 27th of July, is the following statement:

"That before the said steamer left Jamaica, deponent was requested by one Dr. Caminero, a member of the American consulate at Kingston, to visit the consulate, as the consul wished to discuss with deponent some important business—the American consul having got information by some means that deponent some time before had contemplated the building of docks in the harbor of Santiago, Cuba, and with that view had made or procured extensive drawings of the harbor depths of water in various parts, and other information that would be valuable to the American fleet, then operating in front of Santiago, the consul knowing deponent to be a Cuban and enthusiastic sympathizer for their cause.

"On the 17th or 18th of June, 1898, deponent went to the office of the American consul in Kingston, and, knowing that the said Arthur E. Beattie was a sympathizer with the Cuban cause, asked him to accompany him, which he did. That at the interview with the consul, deponent informed him, that he had with him in Kingston, Jamaica, the plan and soundings of the harbor of Santiago aforesaid; and on the 23d of June he again met the consul by appointment, Mr. Beattie being with him, and being familiar with the coast around Santiago, *he made and submitted plans,* and explained to the consul and marked out a place suitable for the landing of an armed force in Santiago Bay at the same time that the American forces were landing at Baiquiri. It was agreed between the consul and deponent—he being informed by Mr. Beattie that the steamer would sail shortly for Manzanillo, and shortly return to Jamaica from there—that on her return from Manzanillo to Jamaica, deponent would go up to Santiago and meet Admiral Sampson, and the consul would in the meantime advise Admiral Sampson if possible." (Record, p. 22.)

On the examination of Consul Dent he produced reluctantly, under call from claimant's counsel, a copy of his original letter

to Admiral Sampson of June 23rd, 1898, enclosing these plans and maps obtained from the *Benito Estenger.* In the course of the letter to Admiral Sampson he states regarding Messa:

"He is a member of this large firm at Santiago, the owner of considerable property. From my two interviews with him, I should judge him to be a man of no special prejudices, a business man, content to go along as quietly as possible, a man of intelligence, about sixty years of age.

"He offered voluntarily, as he offered these plans to me, to give any information that he could relative to the country around Santiago without compromising himself, and he evidently expects nothing in return but the prospect of peace and the resumption of his business. From his long residence in that country, he would, no doubt, be in a position to give much information to yourself and General Shafter.

"His vessel leaves to-morrow night for Montego Bay to Manzanillo, and *he has assented to my suggestion,* as follows: When he leaves Manzanillo he will be presumed to go to Trinidad to bring refugees to Jamaica, but he will come outside of the Keys, and stand off twenty miles from Cape Cruz due west, where a cruiser can pick him up, ostensibly detain his vessel for examination, take her in to the fleet, where you can interview him to any extent you desire, if you see fit.

"*The object of apparently capturing him will be to disarm suspicion on the part of the Spaniards, who would well know his vessel.* If you care to avail yourself of this plan you could send a vessel to the point named Wednesday night. Messa has made appointment for that place for Thursday morning, June 30th. You quite understand that in dealing with these people one is always more or less liable to imposition. I therefore make no recommendation of Messa to you. I simply give you the opportunity to get information perhaps of value, and to judge of the man for yourself, as I have done.

"*As to the cargo of this ship, it will go in the name of a British subject under the British flag; but I am told privately by the President of the local Junta, who has performed valuable services for me, that the proceeds of this cargo are to be forwarded to the Cuban government and troops through the Cuban agent in Manzanillo. Mr. Lay, on that ground asked me to give him a letter to any cruiser that might be met, but I, of course, declined.* Having regard to his services to me, however, I told him that I would advise you privately of his statement, and you could, of course, use your judgment as to whether you would pass the ship under the circumstances. I rather believe his statement that this is the fact, because he avers that, to avoid

the provisions being seized for the troops, they are to be sold before being landed from the ship.

I have the honor to remain, sir,

Your obedient servant,

(Signed) LOUIS A. DENT.

" Messa has the soundings to accompany his plan of Santiago, but they are in Cuba. I will endeavor to reach him by telegraph and impress my request casually made to bring them back with him if he can get them, though I fear they are in Santiago, where his home is." (*Record,* pp. 77, 78.)

Upon his examination, consul Dent admitted that he had first sought through Dr. Caminero to obtain these plans and information from Mr. Messa. He said:

" I have some recollection that Dr. Caminero informed me that Mr. Messa had in his possession some plans, and that I said to him, if that were the case, I should be very glad to get them. That these plans had relation to Santiago or the country thereabout." (Record, pp. 58, 59.)

" I have an impression that subsequently I spoke a second time to Dr. Caminero about these plans and asked him why he had not gotten them for me." (Record, p. 59.)

Edward George Orrett, also examined under commission to Kingston, stated that he was at the time the agent of the *Benito Estenger:*

" Mr. Dent asked me to let Mr. Messa know that he wanted to see him, and I told him that I would convey his message to Mr. Messa. This conversation took place at the United States consulate at Kingston in the early part of June." (Third Interrogatory, Record, p. 45.)

" After such conversation at the U. S. consulate I saw Mr. Messa and told him that consul Dent desired to see him at the consulate. I delivered the message in question, orally." (Fourth Interrogatory, Record, p. 45.)

The *direct* examination of consul Dent was before the enforced production of his letters, and showed him to be a partial, biased and inaccurate witness. Reviewing the statements in the test-affidavit, he proceeded to contradict them with a recklessness that had not anticipated the call for his official correspondence. This is one contradiction of the test-affidavit as an example:

"The fifth paragraph is untrue in the statement that the special reason making these plans desirable was because they exhibited a suitable place for landing troops in Santiago. Such a suggestion was never made either by Mr. Messa or myself" (p. 59).

In his letter of June 23d to Admiral Sampson, which he was made to produce the second day of his examination, consul Dent wrote:

"Mr. Messa also calls my attention to a fine little harbor about two miles to the westward of Santiago entrance, where you can get ten feet of water close up to shore *for the landing of troops.* He says Nunes knows the spot perfectly" (p. 78).

On the cross-examination of consul Dent on the first day he was asked:

"I put this matter to you, Mr. Dent, as a matter of good faith: that you had on the 14th written to Admiral Sampson, giving the name of this vessel; that you had afterwards received these plans and surveys of Santiago; that you had made the suggestion that there might be an appointment to confer with the Admiral and give him this information; that the vessel makes the voyage to Manzanillo that she had intended, and before she can arrive at the point she is captured. I would like to know what explanation you have of the capture after such an arrangement had been made? A. My answer is this: Mr. Messa came to me and asked me to give him some protection. I refused to give him a permit, as already stated, and it was suggested that I give him a letter. I refused to give him a letter to the Admiral, as I did not have strong faith in the good faith of Mr. Messa; and in order to test Mr. Messa, I agreed to this plan; that I said to him that if he wanted to go over there and make this trip, I would put it in his way to present his case to the Admiral personally, and then let the Admiral decide whether he could make the voyage; and that, in order to do so, I would write this letter direct to the Admiral, which I would not give to him, and he could make the voyage at his own risk and venture and take the Admiral's decision if he saw fit. Mr. Messa did not keep good faith, because he did not keep the appointment; went in to Manzanillo and was captured three days before the time set for the appointment. * * * I claim that the entire transaction was a breach of faith on Mr. Messa's part, as before stated. *I told him it would not be possible for him to carry a cargo(!)* because, in my judgment, the Admiral

would in no event permit cargo of that character to be landed in Cuba." (Record, p. 69.)

On the re-direct examination also on the first day consul Dent stated further:

"Q. At the time you were talking with Mr. Messa about meeting Admiral Sampson was it contemplated that he should go first into Manzanillo, or was he to go to the suggested point of meeting from Jamaica? A. From the character of the whole transaction, I should say that it was *not* contemplated that he should carry that cargo into Manzanillo." (Record, p. 71.)

Contrast this positive statement under oath with the consul's official letter written at the time, to Admiral Sampson, as follows, describing the cargo to be carried and then proceeding in detail:

"The vessel leaves to-morrow night for Montego Bay for Manzanillo, and he has assented to my suggestion as follows: *When he leaves Manzanillo,* he will be presumed to go to Trinidad to bring refugees to Jamaica, but he will come outside of the Keys and stand off twenty miles from Cape Cruz due west, where a cruiser can pick him up, ostensibly detain his vessel for examination, take her to the fleet, where you can interview him to any extent you may desire if you see fit. The object of apparently capturing him will be to disarm suspicion on the part of Spaniards, who would well know his vessel."

Instead of being a breach of faith, Messa and the claimant had too implicit faith in these assurances of the United States consul. It was plainly intended that the vessel was first to make a voyage into Manzanillo, discharge her cargo for the local Junta, come out, meet the Admiral, and supply such oral information as was needed to explain the plans and surveys.

The excuses set up by the consul for the capture are two-fold: First, that Messa improperly took a cargo *into* Manzanillo instead of first waiting outside for the rendezvous with the Admiral —a shifty pretense destroyed by his own official dispatch written on the very day of the final interview. Second, that a blockade which he elegantly termed a *de facto* one, had already existed at the Port of Manzanillo on the 20th of June as he had learned officially by letters from Admiral Sampson, and had notified the claimant. His idea evidently was that a technical breach of this imaginary blockade, if fastened on the claimant, might stand as

an excuse for the breach of faith on the part of the consul and the Government in subsequently seizing the ship.

Fortunately for truth, this last excuse was also disproved from the same official document which the consul was required to produce.

This letter of June 23d to the Admiral makes no mention of any blockade. The first letter intimating the intention to form a blockade is dated June 25th, two days *after the departure* of the *Benito Estenger.* Admiral Sampson then wrote:

"As soon as the vessels of light enough draft are available I hope to establish an effective blockade of the space between Cape Cruz and San Antonio." (Encl. No. 4, Record, p. 76.)

This letter was after the *Benito Estenger* had reached Manzanillo.

According to the President's proclamation, it was not till three days after this, and more than twenty-four hours after the capture of the *Benito Estenger,* that such a blockade was officially proclaimed at Washington. (See Appendix, p. 21.)

Confronted with these papers, the consul still sought to evade, and to support his statement by reference to imaginary verbal messages, by which he claims the advance information of the blockade might have reached him. He comes down finally to the last excuse, as follows:

"In my testimony of yesterday I believe I stated very positively that my warning to Mr. Messa as to the blockade was based upon letters from the Admiral advising me of the fact of the blockade. If, as might be, the letter numbered Exhibit C, from the Admiral, be the earliest letter which I had from the Admiral upon the subject, it stands as a matter of course that I could *not* have given my warning to Mr. Messa based upon letters from the Admiral. The reading of these papers has refreshed my memory somewhat. I am quite positive that I had information of the blockade previous to the date of the Admiral's letter. At that time I was in constant communication with the Admiral through letters and through verbal messages by means of the press despatch boats, which were frequenting Jamaica daily, and it may be my information of the blockade came through this source. In addition to this, I recall having some conversation with Commander Emory, of the U. S. S. *Yosemite,* who arrived in Kingston upon the date of the departure of the *Purissima Concepcion,* that is, June 16th, and I

remember distinctly discussing the matter of the blockade with him. It is my impression that Commander Emory told me at that time that the Admiral was establishing this blockade, and he asked me particularly again with reference to my suggestions to the Admiral previously as to the exact location and character of the blockade." (Record, pp. 72.)

The claimant's own account of the interview agrees in every particular with the documents:

"Previous to the sailing of the *Benito Estenger* for Manzanillo, Enrique de Messa, my supercargo, and myself had an interview with the United States Consul Dent, when Enrique de Messa gave the Consul tracings of the Harbor of Santiago de Cuba, and also an original plan of the Eastern provinces of the Island of Cuba. *Consul Dent then proposed* that Messa, with the ship, should meet Admiral Sampson after the cargo had been discharged at Manzanillo, and that the vessel, with this object, should be off Cape Cruz on the 30th June, 1898, for the purpose of meeting a United States man-of-war, which would convoy the vessel up to the fleet under the command of the Admiral, who was then blockading Santiago de Cuba, and there give Admiral Sampson certain information as to the approaches to the Harbor of Santiago. This, as owner of the *Benito Estenger,* I consented to, and impressed upon Messa the importance of keeping the appointment." (Record, p. 40.)

This detailed statement of testimony is needed to show the services given by, and arrangements entered into with, the owners of this vessel before her capture.

Consul Dent's unenviable attitude has this explanation. He was in a trying position, zealous to aid the naval forces. It was especially needful to get information regarding Santiago. These objects once attained, he became indifferent to the situation of those whose trust in his arrangements had brought about their capture. His subsequent position is that of a witness seeking to be freed from responsibility. In this motive he talked of a blockade five days before it existed, did not scruple to charge that the flour carried was ultimately delivered to Spaniards though shipped by the President of the local Cuban *junta,* and finally raises the issue of the British flag, although that fact was fully written to the Admiral. Although advised as to the transfer, at the time, Mr. Dent had made no protest or objection to the British authorities.

The learned District Judge (Honorable James W. Locke) decided there was no question of violation of blockade, as it had not been declared previous to the capture, that the transfer to Mr. Beattie had not been sufficiently made out, and that therefore Mr. Messa was still to be deemed the owner.

Continuing, Judge Locke said:

"Reaching this conclusion, it is claimed that Messa was a Cuban, a Cuban sympathizer, and had rendered valuable services to the United States Government, and was not liable to be so considered an enemy, as to subject his property to condemnation. The rights of the Cubans or of Cuban sympathizers, as contradistinguished from other Spanish subjects, are a difficult question, but one which it is considered must be determined by the political department of the Government. It is clearly within the province of the Executive to make a distinction between Spanish and Cuban property, or, even, when satisfied that the services of a Cuban have entitled him and his property to some recognition, but until there has been some such recognition by the political department of the Government, it is not considered that the courts can make any such distinction, and the property of any subject of Spain, when captured, can only be considered that of an enemy, notwithstanding the personal sympathies or personal services of the owner. Unquestionably Messa, the original owner, was at the time of the seizure a subject of Spain. It was therefore considered that the steamer was the property of an enemy, and a decree of condemnation was entered."

The claimant appealed and assigned error:

1. For that the Court held and decided that the *Benito Estenger* was lawful prize of war.

2. For that the Court failed and declined to hold that the *Benito Estenger* was not lawful prize of war.

3. For that the Court failed and declined to hold that the *Benito Estenger* was a neutral vessel lawfully owned and registered in the name of a British subject domiciled in Great Britain.

4. For that the Court failed and declined to hold that the steamship *Benito Estenger* was a British merchant ship duly documented and entitled to the protection of her flag.

5. For that the Court failed and declined to hold that the *Benito Estenger* was employed and engaged on a voyage by and on behalf of the local Cuban junta of Kingston for whom the steamer had carried a cargo from Kingston into Manzanillo.

6. For that the Court failed and declined to hold that said Cuban junta and its supporters were allies of the United States and that vessels employed by them are not lawful prize of war.

7. For that the Court failed and declined to hold that the *Benito Estenger,* when captured, was in the service of the United States, this claimant and her supercargo having furnished maps, surveys, and other important data of Santiago harbor to Admiral Sampson, and having arranged that the vessel should come to meet his fleet to furnish additional information to the Admiral.

8. For that the Court condemned, as enemy's property, the vessel thus employed in friendly offices to the forces of the United States (Record, pp. 25, 26).

The steamer *Benito Estenger* has been since appraised, and a stipulation for her appraised value taken by the Government in lieu of the vessel.

## ARGUMENT.

I.—THE VESSELS OF CUBAN INSURGENTS, AND THEIR ADHERENTS, CANNOT BE DEEMED THE PROPERTY OF ENEMIES OF THE UNITED STATES.

The joint resolution of April 20th, 1898, declaring the people of Cuba free and independent, and directing the Executive if necessary to resort to armed intervention, decided their status as allies, and estopped our naval forces from capturing their vessels.

This right of capture against the Crown of Spain could be put forth only against subjects of that sovereign. Thus Grotius says, "Things are deemed taken from the enemy which are taken from his subjects."—"Hosti autem eripi consentur et

quæ subditis hostium eripiuntur." De jure belli ac pacis, lib. III cap. VI, II, 5.

When our declaration pronounces this sovereignty terminated, and that the Cubans are no more subjects of the enemy, how could the right of capture thereafter be enforced against the newly recognized belligerent?

The general proposition that Cuban merchant vessels are to receive that amity belonging to allies is not essential to this appeal, which rests on special facts. Its discussion is merely by way of introduction. The point is already before this Court in other cases.

Apparently Judge Locke thought this weighty matter was for the Executive alone, and that even after these positive Resolutions of Congress, the Federal Judges are powerless. Surely the interpretation of these resolutions is with this Court. By its sentence it can avert a grotesque inconsistency from our naval annals. It can prevent a great national mission, begun with professions of disinterested liberation, from reaching an ignoble end, in petty seizures and cheap enrichment from the shipping of our poor protégés. Saturn devouring his own offspring, as soon as born, is a repellant type of military intervention in the sacred cause of humanity.

## II.—The capture cannot be sustained on the ground that the property taken was that of enemies of the United States.

In what respect had Messa, who had given up to the consul for Admiral Sampson his private papers, plans and drawings, some of which had been extracted from the Government archives, shown himself an enemy of the United States?

How had Arthur Beattie acted as an enemy of the United States, in turning over the ship that he had just purchased, to be used to convey information to the Admiral, and to aid in the operations then going on against Santiago?

Instead of enemies of the United States, the claimant of the vessel and his supercargo were furnishing the very means to Admiral Sampson and General Shafter to enter the Harbor of

Santiago, and terminate the war, perhaps earlier and more effectively, than they were afterwards able to do, through not having kept the consul's appointment.

Mr. Beattie compromised his own position as a neutral by thus aiding and assisting the United States in the prosecution of the war.

After the claimant had acquiesced in this earnest solicitation to meet the Admiral and explain the plans—solicitations evidenced by repeated requests to Dr. Caminero, followed up by a message through the ship's agent, Edward G. Orrett—after the consul had written to the Admiral that it was his own suggestion,—he has undertaken to say that this was a plan in which *he* was passive, and that Messa sought *him* out for this opportunity to hand over this information to the United States authorities!

These plans and original tracings were in Admiral Sampson's hands by the 25th of June. What use he has made of them does not appear. The confiding claimant, desiring honorably to assist the United States, is rewarded by the capture of his property, and, instead of the aid and support of the consul, finds that official seeking to repudiate the transaction, except so far as his own documents render it impossible to deny his participation.

Can this Court hold that these were acts of persons inimical and hostile to the interests of the United States? Had the war terminated otherwise, and Cuba been victoriously held by Spain, what would have been the position of Mr. Beattie and Mr. Messa? Their landed and other properties, of no inconsiderable value, would have been confiscated; they themselves liable to imprisonment, perhaps death. Such was the risk they ran. Are they now to be treated as enemies, and their property condemned, by the United States?

It is abundantly proved that the firm of Gallego, Messa & Co., the former owners of the *Benito Estenger,* were not Spanish in sympathies; and, although the Spanish flag had been flown by the vessel, it was by compulsion of Spain, and not by choice. This appears not only from the test-affidavit of Mr. Messa, but is confirmed by Mr. E. G. Orrett, who states:

"The firm of Gallego, Messa & Co., of Santiago de Cuba, of which Mr. Enrique de Messa is a member, have been old correspondents of my firm.

"Mr. Messa is a Cuban, and has always been a warm sympathizer of the Cuban cause, and has always been in favor of

Cuba being annexed to the United States of America" (Record, p. 46).

The test-affidavit of Mr. Messa was handed to Mr. Dent on his examination (p. 58) and the consul was asked to read it over, and criticise any parts of it that were not true. He had not a word of contradiction to Mr. Messa's statement as to his sympathy and prominent identification with the Cuban cause.

Mr. Messa's statement in his test-affidavit was criticised, or rather debated, by Mr. Dent, as follows:

"There is a statement in the first paragraph of this affidavit which I believe to be untrue. The statement is that the vessel was brought to Jamaica for the purpose of disposing of it. My belief is founded on my general knowledge of the case. Mr. Messa arrived in Kingston before Mr. Beattie, and therefore could not have come to Kingston for the purpose of disposing of his vessel to Mr. Beattie. Further, the vessel was not transferred to Mr. Beattie until after she was lying in the harbor of Kingston for two or three weeks, and until about the time of the decision of the British government in the case of the steamer *Purissima Concepcion*" (p. 58).

Here are three distinct statements of fact. Every one is wrong. Messa did not reach Kingston *before* Mr. Beattie. Both, coming by different vessels, arrived there on the same day, June 4th, and just five days afterwards was the sale—on June 9th. The *Purissima Concepcion* was detained long afterwards. She did not leave till Thursday, June 17th (See postscript letter Dent to Admiral Sampson June 21st, Record, p. 79).

But with all this recklessness, and with full secret information from the Cuban Junta, and evident familiarity with their leaders, Mr. Dent takes no issue with Mr. Messa's statement of his past loyalty and sacrifices for the insurgent cause.

"The essential question to be determined in war, in regard to the character of every person is whether he is a friend or an enemy. National character furnishes a safe test of friendly or hostile character in most cases, and the presumption arising from it does not require to be supported by any evidence of the conduct of the party. But the presumption arising from national character fails altogether if the party is in action, and his acts are at variance with the character of his nation." * * "But there is this difference between enemies *de facto* and enemies *de jure*, that former are enemies *sub modo* only, and in

reference to so much of their conduct as is hostile. *If they cease to act as enemies, the foundation of their hostile character is gone.*"

Travers-Twiss, Law of Nations, Rights and Duties in Time of War, §157 (London, 2d ed., 1875).

III.—THE CONDUCT OF MR. MESSA IN WITHDRAWING HIS SHIP FROM CUBA BY HIS SALE TO MR. BEATTIE, WAS LAWFUL, JUSTIFIABLE, AND THE ONLY MEANS OF PROTECTING THE VESSEL FROM SPANISH INTERFERENCE, AND FROM THE PENALTIES OF CAPTURE AS ENEMIES' PROPERTY.

At the outbreak of the war, it was the right and privilege of Mr. Messa to withdraw his property from Spanish control and to dispose of the vessel to a neutral. It was his duty to do this promptly without undue delay. There was no flag of Cuba recognized. It was natural to sell to a British subject, who was also his creditor. Because this was not directly for cash it has been erroneously considered fraudulent or merely colorable.

It is not law that such a sale must be for cash, even if made *imminente bello*, or even *flagrante bello*.

The *Ariel*, 11 Moore, P. C., 119.

In that case there was not only non-payment of a large part of the price, but there was an engagement to pay part of this purchase money out of the future earnings of the ship. The Privy Council quoted with approval from Lord Stowell, as follows:

"The captor has no access whatever to the original private understanding of the parties in forming such contracts. It is, therefore, unfit that he should be affected by them. His rights of capture act upon the property without regard to secret liens possessed by third parties. In like manner, his rights operate on no such liens where the property itself is protected from capture" (p. 138).

In the case of Batten *v.* The Queen, a vessel originally Russian, had been conveyed to parties in Antwerp, and was at the time under the Belgian flag. After capture restitution was

resisted, on the ground that the transfer was invalid. The Court, however, refused to set aside the title of the purchasers, and declared that secret liens of other parties could not defeat the legal title where the fact of neutral ownership appears. Chief Justice Cockburn said:

"It is obviously a very different thing to apply the same principle to a case where the Court, in pronouncing sentence, is obliged to start with the fact that the vessel is neutral property, and was, therefore, not liable to seizure. To say in such a case that, because the party whose claim is put forward may only have the legal title, while another has the beneficial interest, the vessel, though neutral property, must necessarily be condemned, is a proposition to which we must not be taken as giving our assent, though the facts of the present case do not render it necessary for us to pronounce judgment upon it."

11 Moore, P. C., 271, 287.

The United States District Court for the Southern District of New York (Judge Betts), had a case of attempted forfeiture of a vessel previously owned by a citizen of New Orleans but conveyed in part payment of a debt to a woman who was a British subject on May 25, 1861.

Judge Betts said:

"It is proved that she took the transfer of this vessel from a Mr. Leitch, then residing in New Orleans, and having also connection with a house in trade in Minatitlan, in Mexico, in part payment of a debt *bona fide* owing her from him, and that he, because of disaffection with the rebellion in Louisiana and being loyal in his sentiments to the Union, left New Orleans in the vessel."

The Court ordered the vessel acquitted as not subject to forfeiture.

The *D. F. Keeling,* Blatch. Prize Cases, 93.

IV.—This Court can do justice by ordering restitution.

It is the appropriate province of the Superior Prize Courts to consider, construe and give effect to the previous political declarations of the government. Lord Stowell often overruled

the narrow construction attempted to be enforced by the administrative officers of the Crown.

In the *Maria,* 6 C. Rob., 201, the Court thus examined and enlarged the scope of a diplomatic license granted to the people of Bremen, when the river Weser was under blockade.

The Prize Court is also the proper tribunal to determine whether in honor and good conscience the property should be condemned, considering the previous conduct of the claimants.

Honor will not allow a belligerent to commit the injustice of condemning the property of those who have acted as friends, even in the extreme case where their goods are on an enemy's ship.

Thus in France a reclamation was made regarding cargo on the ship *de Papenbourg des Cinq-Frères,* which had come from Riga. It appeared clearly that the vessel was enemies' property and therefore the cargo owned by Jean-Baptiste Ghyselen and Joseph Roche became subject to confiscation because loaded on an enemy's vessel. The arrêté declared the proofs offered by these cargo owners unavailing—

" Puisque cette cargaison seroit toujours confiscable, quel qu'en fût le propriétaire, des le moment qu'elle étoit chargée à bord d'un navire ennemi; Considérant, d'un autre côté, que les services rendus à la République par les réclamants en fournissant à ses approvisionnements, ayant paru aux representants du peuple près les armées du Nord et de Sambre et Meuse de nature à mériter que la cargaison que réclamant Ghyselen et Roche leur soit restituée, le comité pense qu' après la confiscation prononcée, il est de la générosité françoise de leur faire don et remise de cette cargaison sans toutefois tirer à conséquence," etc.

Since this cargo will be always confiscable regardless of its ownership, from the moment that it is loaded on an enemy's vessel. Whereas, on the other side, the services of these claimants to the Republic in furnishing supplies having appeared to the representatives of the people near the Northern armies and those of the Sambre and Meuse, as of a character to deserve that the cargo claimed by Ghyselen and Roche should be restored to them—the committee are of opinion that after the condemnation declared, it is of the liberality of France to decree a grant and restitution of this cargo, without, however, creating a precedent.

Lebeau, Nouveau Code des Prises, vol. 4, p. 64 (Paris, An. 9).

In the case at bar every party interested has rendered meritorious services to this Republic. Even Mr. Lay, who shipped the *Benito Estenger's* cargo, is certified by the consul as one "who has performed valuable services for me" (Dent, letter June 23d, page 78).

V.—THIS CAUSE DOES NOT CALL FOR ANY NICE DISCUSSION OF THE LAW OF DOMICILE, NEUTRALITY, RECOGNITION OF INSURGENTS, OR BLOCKADES.

A government which seizes vessels engaged in friendly offices, as was the *Benito Estenger,* is estopped from alleging that they are hostile, or to question the formalities of transfers. Apparently Lieutenant Helm acted in entire ignorance of the proceeding between the consul and the Admiral. The demand to be taken to the Admiral made by Mr. Messa to his captors, was naturally treated as a possible *ruse de guerre,* and refused.

It falls to this Court instead to exercise those powers of relief and restoration that undoubtedly would have been shown by the Admiral had an opportunity been afforded him.

The vessel should be restored.

HARRINGTON PUTNAM
Advocate for Claimant.

Jany. 3, 1900.

## Appendix I.

U. S. DISTRICT COURT,

SOUTHERN DISTRICT OF FLORIDA.

The United States
*vs.*
Benito Estenger.
} Opinion.

In the case of the *Benito Estenger,* the Court said there was no question of a violation of the blockade, as none had been declared previous to the capture, but the question was as to the nationality of the actual owner at the time of the seizure. The presumption was against the *bona fides* of the sale made under the circumstances that were alleged in this case, where unquestionably the principal, if not the sole object, was an exchange of flags. This presumption, the Court said, had not been satisfactorily overcome by the testimony. The payment had not been shown clearly and honestly, as might have been done; the original owner had virtually continued in possession and had planned and directed the movements of the vessel, and appeared to have been the principal one interested. He made all arrangements with the consul in regard to where and when she would sail and the same master and crew remained on board, supplemented only by a nominal master, necessary under the English flag. The entire testimony failed to satisfy the Court that the alleged sale was not a colorable one, simply for the purpose of an exchange of flags, and that the actual title is not still in Messa, the original owner.

Reaching this conclusion, it is claimed that Messa was a Cuban, a Cuban sympathizer, and had rendered valuable services to the United States Government, and was not liable to be so considered an enemy as to subject his property to condemnation. The rights of the Cubans or of Cuban sympathizers, as contradistinguished from other Spanish subjects is a difficult question, but one which it is considered must be determined by the political department of the Government, said the Court. It is clearly within the province of the Executive to make a distinction between Spanish and Cuban property, or, even when satisfied that the services of a Cuban have entitled him and his property to some recognition, but until there has been some such recognition by the political department of the Government, it is not considered that the courts can make any such distinction, and the property of any subject of Spain, when captured, can only be considered that of an enemy, notwithstanding the per-

sonal sympathies or personal services of the owner. Unquestionably Messa, the original owner, was, at the time of the seizure, a subject of Spain. It was, therefore, considered that the steamer was the property of an enemy, and a decree of condemnation was entered.

A true copy of opinion pronounced in above entitled cause.

Attest: E. O. LOCKE,
Clerk.

[SEAL.]

## Appendix II.

### THE BLOCKADE.

The following is the official notice of the blockade as given to the Associated Press and first published in the *afternoon* papers of July *28th* and the morning daily journals of the 29th:

"EXTENDING THE BLOCKADE.

ANOTHER PROCLAMATION BY THE PRESIDENT.

The Southen Coast of Cuba from Cape Frances, Isle of Pines, to Cape Cruz, included; also San Juan, Porto Rico.

WASHINGTON, June 28.—The President *to-day* issued a proclamation extending the blockade of Cuba to the southern coast from Cape Frances to Cape Cruz, inclusive, and also blockading San Juan, Porto Rico. The proclamation is as follows:

Whereas, For the reasons set forth in my proclamation of April 22, 1898, a blockade of ports on the northern coast of Cuba, from Cardenas to Bahia Honda, inclusive, and of the port of Cienfuegos on the south coast of Cuba was declared to have been instituted; and

Whereas, It has become desirable to extend the blockade to other southern ports,

Now, therefore, I, William McKinley, President of the United States, do hereby declare and proclaim that, in addition to the blockade of the ports specified in my proclamation of April 22, 1898, the United States of America has instituted and will maintain an effective blockade of all of the ports on the south coast of Cuba, from Cape Frances to Cape Cruz, inclusive, and also of the port of San Juan, in the island of Porto Rico.

Neutral vessels lying in any of the ports to which the blockade is, by the present proclamation, extended, will be allowed thirty days to issue therefrom with cargo.

WILLIAM MCKINLEY,
President of the United States of America.

June 27, 1898.
By the President,
J. B. MOORE,
Acting Secretary of State."

[redacted]

[redacted]

[redacted]

IN THE

# Supreme Court of the United States.

OCTOBER TERM, 1899.

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THE STEAMSHIP *Benito Estenger*, ARTHUR ELLIOT BEATTIE, Claimant, *Appellant*,

*v.*

THE UNITED STATES.

No. 192.

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## BRIEF AND ARGUMENT ON BEHALF OF CAPTORS.

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### *Statement of Case.*

This is an appeal from a decree in prize of the District Court of the United States for the Southern District of Florida. The libel in prize (Rec. p. 1) filed July 2, 1898, alleges the capture of the steamer *Benito Estenger* by the U. S. S. *Hornet* on June 27, 1898, as prize of war, and prays its condemnation and forfeiture to the United States. Depositions were taken *in preparatorio* on July 21, 1898.

A claim was interposed July 27, by Baldomero Perez (p. 19) as master of the steamer, on behalf of Arthur E. Beattie, a British subject, as owner, and supported by affidavits of himself and of Enrique de Mesa.

An order for further proof was made, and, upon final hearing on depositions taken on both sides under this

order, the vessel was condemned as prize December 27, 1898, on the ground, as stated in the decree (p. 25), of "it appearing to the court that the said S. S. *Benito Estenger* is enemy's property."

Eight assignments of error were alleged (p. 25) amounting to these two: (1) that the vessel was a British vessel; (2) that the vessel at the time of its capture was actually engaged in aiding the United States in its war with Spain.

### *Undisputed Facts.*

The following facts are undisputed:

The vessel prior to June 9, 1898, was the property of Enrique de Mesa or of the firm of Gallego, de Mesa & Co., subjects of Spain and residents of Cuba.

On the 9th of June, 1898, a bill of sale was made by Mesa to Arthur E. Beattie, the claimant, a British subject, and upon apparent compliance with the requirements of the British law governing registration it was registered as a British vessel in the port of Kingston, Jamaica.

The vessel had, prior to this time, been engaged in trading with the Island of Cuba, and more particularly between Kingston and Montego, Jamaica, and Manzanillo, Cuba. After the transfer of ownership, it continued in the same trade. It left Kingston on June 23, 1898, with a cargo of provisions for Manzanillo, and on June 27, at about 2 o'clock A. M. left Manzanillo for Montego, and then for Kingston. It was captured about 5.30 A. M. of the same day. Mesa was on board as supercargo, and his request to be taken to Admiral Sampson was denied.

### *Disputed Facts.*

The disputed facts are: (1) the conditions of the transfer to the British flag, and (2) the circumstances under which the voyage was made.

### *The Conditions of the Transfer.*

The captors aver that the assignment was merely colorable with a view to giving the owner, a Spanish subject, an opportunity to continue the use of his vessel with impunity in spite of the war. For a discussion of this question it is necessary to refer to the evidence in detail.

In the deposition *in preparatorio*, Mesa testifies (p. 15) in these terms: "She was sold at Kingston, for $40,000, which sum has already been paid." The reason given for the sale is that he was obliged to get money for his family to live on. This deposition is dated July 21, 1898. In his test affidavit (p. 21), July 27, 1898, he swore to the sale of the vessel for $40,000, "the deponent being, at the same time, indebted to the said firm of Beattie & Co., a large part of which consideration of $40,000 was credited by the said Arthur E. Beattie on the indebtedness of him, the said deponent."

Jose V. Perez, purser of the vessel, in his deposition *in preparatorio* (p. 18) testified that Mesa told him that the ship was sold for the support of his family.

John Orrett, in a deposition taken for the claimant, manager of the ship brokerage business of E. G. Orrett, at Kingston, attempts (p. 35) to give some particulars of the purchase, but evidently states only hearsay, giving the price as £9,000, but says that he is unable to say what arrangements were made for payment and how the purchase money was paid.

S. E. P. Pietersz (p. 37), an accountant in Orrett's office, knows the price was £9,000, without saying how he knows it, "which he believes was *bona fide* paid; in what shape or how, witness does not know."

Beattie, the alleged purchaser, testifies (p. 38) that he bought the vessel for purposes of trade; (p. 40) that he was the sole *bona-fide* owner; (p. 42) that he bought the vessel for £9,000 and received a formal bill of sale

and possession of the steamer. The deposition then continues:

"He declines to say of what the payment or payments of the purchase money consisted, but states that the sale was a *bona-fide* one."

It is a notable circumstance that the parties to the alleged sale do not even agree as to the price, one saying $40,000 and the other £9,000, two substantially different sums. Doubtless the reason for this is that no consideration passed.

Louis A. Dent, U. S. Consul at Kingston, was the only witness called for the United States. He testified (p. 55) as follows:

"I had a conversation with Arthur E. Beattie in the Myrtle Bank hotel, in Kingston, Jamaica, I think a few days after the *Bonita Estenger* left Jamaica, in which I suggested to Mr. Beattie that the change of flag of the vessel was a fraudulent one, and that by his having sworn to the declaration of ownership he rendered himself liable to prosecution under the British merchants' shipping act. Mr. Beattie did not deny that such was the fact, but replied that he had signed the declaration to oblige Mr. Mesa, who was an old friend of his. This was the sum and substance of the conversation, which was desultory and not continued.

"Q. Where did this conversation take place?

"A. In the Myrtle Bank Hotel, at Kingston, where we were both residing. Subsequent to the seizure of the *Benita Estenger* and of Mr Beattie's own vessel, called the *Greenan Castle*, Mr. Beattie called upon me at my office and requested me to use my good offices to secure the release of the latter. (Mr Putnam objected to any reference to the *Greenan Castle*). I told Mr. Beattie that I was satisfied to help him with respect to the *Greenan Castle*, but that he must not expect me to do anything to aid him with regard to the *Benita Estenger;* that he knew that I knew, and we were both well aware of the fact, that the transfer was fraudulent, and that I could do nothing

to aid him with regard to that vessel. I said to him that I regretted the position in which he had placed himself, rendering him liable to prosecution by the British authorities. I asked him the direct question whether my charge was not correct. Mr. Beattie was very much disturbed; said to me that he realized the position in which he had placed himself; that he regretted it very much; that Mr. Messa had not treated him properly; should never have asked him to sign the declaration, and that he had not paid anything for the vessel, but that his plea would be that the vessel was really his, having been given to him absolutely by Mr. Messa; to which I replied, 'Given to you, I presume, to be returned after the war was over; given to you for the purpose of effecting the transfer and protecting the vessel'; which facts Mr. Beattie admitted to me were true."

We submit that this evidence clearly shows an attempt to make an assignment solely for the purpose of evading capture.

### *The Circumstances of the Voyage.*

The captors maintain also that the evidence shows the continued relations of Mesa and Perez to the vessel exactly consistent with the theory of continued ownership by Mesa.

In his test affidavit, Perez (p. 20) states that Mesa continued on the vessel as supercargo and details a conversation between him and the officer making the capture, in which Mesa clearly assumed the right of controlling and directing the movements of the vessel. Mesa himself says (p. 13) that he was in charge of the vessel. Beattie, the claimant, told Pietersz (p. 36) that Mesa had been made supercargo, and Beattie testifies (p. 40) to this appointment. In the entire testimony of Consul Dent (p. 54) Mesa appears as the person actually in charge of the vessel.

Thus, it would seem that the actual management of

the vessel admittedly continued just the same as it had been before the alleged transfer.

Beattie says (p. 43) that before the purchase the captain was Baldomero Perez; that afterward he appointed Edwin Cole, a British subject, captain in conformity to British law, and that Perez was second mate and pilot.

Cole (p. 10) testifies that he was master of the vessel: had known it since June 21, had first seen it a week before, and that when he came aboard Perez was master.

Perez, however, says, in his test affidavit (p. 20), that Beattie came on board and told him that he could remain as master but that it would be necessary for him to put an English subject on board as first officer or second captain. In his deposition *in preparatorio* he says positively (p. 7): "I am the master of the vessel," and (p. 8) "I belong to the vessel in the capacity of master." He makes no reference to having been superseded. In the claim presented by Perez on behalf of Beattie, on which the present appearance in court is based, he says "that he is the master of the said steamer."

Cole makes no other appearance in the case than by his deposition *in preparatorio*, nor did it occur to him to file the claim in court for the alleged owner. Mesa (p. 13) has nothing to say about Cole, but declares that the master of the ship was Perez, and the purser, Jose V. Perez (p. 16), says Perez was master. The only other witness who mentions Cole is E. G. Orrett (p. 46), the broker in whose office the sale was made, who says that Cole, a British master, was appointed on his recommendation.

All this evidence leads clearly to the conclusion that Cole's appointment was merely nominal, and that Perez continued master, subject only to the orders of Mesa, nominally supercargo, but really owner.

There are some few circumstances showing the *mala fides* of the alleged sale which deserve not to be entirely

overlooked. The Spanish flag, it appears, was still on board (pp. 7, 13, 16), as well as the master of the vessel whom Perez is stated to have succeeded, a Spaniard named Genero Pasaron (pp. 9, 12, 15, 18). Testimony is given showing that the vessel carried goods to Manzanillo on this voyage, under a contract with one Flouriache (p. 39). That contract would doubtless have afforded some light upon the question of real ownership, but it is not produced. It is necessarily inferred that it would contradict the position asserted by the claimant. Its absence is alone a declaration of claimant's unwillingness to disclose all the facts relating to the voyage.

### *The Transfer Not Bona Fide.*

All this evidence leads positively to the conclusion that there was no actual transfer of the ownership of this vessel. The failure of the parties to state the terms of the transfer, their disagreement as to the price, the contradiction between the allegation that the sale was to raise money for his family and the fact that no cash payment was made, the refusal of the claimant to say how the payment was made, the failure to produce the contract with Flouriache, would, in the absence of the damaging admissions to Consul Dent, have prevented his establishing his claim. With his admissions, the contrary of his allegations is proved. The burden is upon him and simply on his failure the property must be condemned, but as he has admitted the lack of good faith in the sale, the ground of condemnation is proved beyond controversy.

No less forcible as showing the merely colorable purpose of the transfer of title is the contradiction in regard to who was the master. As the British law requires a British subject to be master, Cole seems to have occupied some nominal position on board, but all the testimony, as

well as the conspicuous act of Perez in presenting the claim for Beattie, contradicts Beattie's assertion that Cole was master. The entire weight of evidence is that Perez continued, as before, master of the vessel under the command of Mesa as owner.

### *Legal Effect of Facts.*

A very similar case to this is that of the Island Belle (13 Fed. Cases, 168) decided in the District Court for the Eastern District of Pennsylvania. An attempt, in many respects similar to this, to transfer title purely for purposes of protection was there disclosed. The court there said (p. 171):

"The rule of decision in some countries has been that, as to a vessel, no change of ownership during hostilities can be regarded in a prize court. In the United States, as in England, the strictness of this rule is not observed. But no change of property is recognized where the disposition and control of a vessel continued in the former agent of her former hostile proprietors; more especially when, as in this case, he is a person whose relations of residence are hostile. That such were the relations of Captain Phillips is apparent. Maritime hostilities could not be prosecuted with any effect if this rule did not apply in an extreme case like this. A vessel, beneficially owned by hostile persons, navigated by a hostile person who is her nominal owner, is transferred by him to their own commercial agent in a foreign country, who immediately executes powers to the same navigator, enabling him not only to conduct and manage her future employment, but to sell her. If, therefore, the case were, as Mr. Sawyer, or as his advocate, states it, she should, I think, be condemned. I am not aware that there was ever so thin a veil thrown over trade of a hostile district to protect a vessel from capture."

This decision follows the decisions of Sir William Scott

on the same subject. In *The Omnibus* (6 C. Rob. 71) the case is reported as follows:

"The only question is whether this ship and cargo are the property of Mr. Ruyl, for whom they are claimed. It is admitted to have been a British ship, transferred at the beginning of the war to the father of the present, who was also the former master, and it is asserted to have been again sold by him to the present claimant. It appears, however, that the vessel continued under the management of the former master, and in the same course of trade in which it had been always employed from Guernsey to Amsterdam, never once going to the port of her pretended owner; and though the master professes to have corresponded with Mr. Ruyl, not a scrap of any such correspondence is produced. The court has often had occasion to observe, that where a ship asserted to have been transferred, is continued under the former agency and in the former habits of trade, not all the swearing in the world will convince it that it is a genuine transaction. The present case has none of the marks of a real transfer upon it. The former master is not only continued but it is made one of the stipulations of the bill of sale, that he shall not be removed. How can the purchaser be said to acquire the right of property under a bill of sale with such a clause, carrying with it a defeazance of the title which it pretends to convey. I have no hesitation in pronouncing that Mr. Ruyl has no interest in this property. The letters from the persons in Holland, to Mr. Priaulx of Guernsey, intimate as much by such expressions as these. 'We advise you not to send back this vessel till we apprize you how things go here.' Would they have written so to the correspondent at Guernsey if the property had belonged to Mr. Ruyl, their neighbor at Embden? These are marks of an interest at Guernsey. It is sufficient, however, to pronounce that the property is not shown to belong to the claimant. As the ship and cargo are involved in the same transaction, and in the same claim, they will both be subject to condemnation."

Shortly after, in *The Flora* (3 C. Rob. 360) the same judge had before him the following state of facts:

"This was the case of a ship taken under a Portuguese flag and pass, and claimed under the treaty. The ship had been a Prussian vessel, transferred to the asserted Portuguese proprietor subsequent to Prussian hostilities. The case was ordered to further proof, and on the 18th of February, 1807, it came on again when it appeared that the vessel had been originally a Dutch vessel, transferred to a Prussian owner on the commencement of Dutch hostilities, in whose employment she had continued till July, 1806, when the vessel was lying at Lisbon, and was there transferred to M. De Souza, under circumstances that appeared to the court, in the discussion of the further proof to falsify the whole transaction."

The claim for ship and cargo was rejected under these conditions, the transfer being considered wanting in *bona fides*.

A note annexed to the above case is as follows:

"In the cases of the *Nostra Seignora de Rosario* and the *Nova Unias*, 11th Novr., 1806.—The King's Advocate intimated that although in some Portuguese cases under the treaty, restitution had passed without objection being taken to the fact of their appearing to have been enemies' ships transferred to the asserted Portuguese proprietor subsequent to hostilities, yet as the practice of resorting to transfers of this kind for the purpose of placing the navigation of the enemy under the protection of a privileged flag, had been growing more prevalent, and was liable to great abuse, he should hold himself at liberty to argue the point, whether the privilege of the treaty could extend to ships purchased of the enemy in any case in which it might appear advisable. In a subsequent case, the *Principe Regente* (27th Oct., 1807) where it was contended in argument that this point had been settled in cases that had already passed. The court expressly declared that it did not consider that question *to have been decided*. That it was a question of great importance and

one that was very fit to be reserved for grave consideration. That case was decided entirely on the facts."

Many authorities, indeed, hold that any transfer of title to vessels of a belligerent *flagrante bello* is void. It is not necessary, in this case, to invoke the full extremity of this doctrine. It has been sufficiently shown in this case that the transfer was colorable only, for purposes of protection, the claimant indeed admitting it, and that the control and operation of the vessel continued after the asserted transfer just the same as before. This brings it wholly within the doctrine of the cases cited. The vessel was enemy's property and is subject to condemnation.

***The Vessel Not in the United States Service.***

The rather astonishing claim is made (p. 25) that at the time of the capture the vessel was actually engaged in aiding the United States and was therefore protected from capture, for this is the net meaning of the fifth to eighth assignments of error (p. 25). A slight consideration of the evidence disposes of this contention.

It was not thought of when the depositions *in preparatorio* were taken July 21, 1898. Baldomero Perez (p. 9), master of the vessel, then testified that at the time of the capture, June 27, 5 30 A. M, they were steering toward Montego Bay. Cole (p. 12), the reputed master, said the same thing, adding, "We steered on a direct course from Manzanillo up to the time we were captured." Mesa, the supercargo (p. 15), then said that she was steering for Montego Bay, adding that "her course was at all times towards the point for which she appears to have been destined from her papers." J. V. Perez, the purser (p. 18), says the same thing. We are struck by the fact that all these witnesses are aiming to show the integrity of their purpose in keeping a direct course.

In the test affidavits of Perez and Mesa, July 27, a new feature is introduced, not disclosed in the earlier depositions. Perez (p. 20) says that on June 27, at 2 A. M., the steamer came out of Manzanillo and Mesa told him that he would communicate with Admiral Sampson at Santiago, if possible. Mesa says (p. 22) that it was understood by all the officers on board that the vessel would make for Sampson's fleet, where deponent would have his interview with Sampson.

Neither Mesa nor Perez were again examined under the order for further proof, but in the testimony of the claimant Beattie, an account is given (p. 40) of an interview between Mesa, Beattie, and United States Consul Dent at Kingston, Jamaica, as follows:

"Previous to the sailing of the *Benito Estenger* for Manzanillo, Enrique de Mesa, witness' supercargo, and witness had an interview with United States Consul Dent, when Mesa gave the consul bearings of the harbor of St. Jorgo de Cuba, and also an original plan of the eastern province of the Island of Cuba. Consul Dent then proposed that Mesa, with the ship, should meet Admiral Sampson after the the cargo had been discharged at Manzanillo, and that the vessel with this object should be off Cape Cruz on the 30th of June for the purpose of meeting a United States man-of-war, which would convoy the vessel up to the fleet under the command of the admiral, who was then blockading Santiago de Cuba, and there give Admiral Sampson certain information as to the approaches to the harbor of Santiago. This, as owner of the *Benito Estenger*, he consented to, and impressed upon Mesa the importance of keeping the appointment. He also impressed upon Consul Dent the necessity of prohibiting him as owner of the vessel against a breach of the neutrality laws, he, the witness, being a British subject. He went to the interview solely to act as interpreter for Mesa, and at his request. During the interview Consul Dent proposed the appointment with Admiral Sampson and witness acquiesced. Consul Dent assured him

that his interests as owner of the *Benito Estenger* would be protected. She was captured upon the 27th of June, and therefore did not have an opportunity of keeping the appointment that the consul had made with Mesa and the witness for the 30th of June."

Consul Dent's letter to Admiral Sampson in relation to this interview appears on pages 77–79. The portion particularly relating to this subject is as follows (p. 78):

"His vessel leaves to-morrow night for Montego Bay for Manzanillo, and he has assented to my suggestion as follows: When he leaves Manzanillo he will be presumed to go to Trinidad to bring refugees to Jamaica, but he will come outside of the keys and stand off twenty miles from Cape Cruz due west, where a cruiser can pick him up, ostensibly detain his vessel for examination, take her to the fleet, where you can interview him to any extent you may desire, if you see fit. The object of apparently capturing him will be to disarm suspicion on the part of the Spaniards, who would well know his vessel.

"If you care to avail yourself of this plan you could send a vessel to the point named Wednesday night. Mesa has made the appointment for that place Thursday morning, June 30.

"You quite understand that in dealing with those people one is always more or less liable to imposition. I therefore make no recommendation of Mesa to you. I simply give you the opportunity to get information, perhaps of value, and to judge of the man for yourself, as I have done."

In Dent's oral testimony he states positively (p. 59) that he told Mesa that Manzanillo was blockaded and denies positively any agreement with Mesa by which he was to be protected because of rendering services to the United States, saying distinctly (p. 56) that he refused to give him a safe conduct.

It is evident upon this testimony that the claimant has entirely failed to prove any such extraordinary state of affairs as he claims, that the United States Consul entered into an agreement whereby he should be permitted to enter the port of Manzanillo, and discharge his cargo and return without interruption, on consideration of furnishing information to Admiral Sampson on his return. Yet, even if such an agreement were established, the facts disclosed render it impossible to claim it as a protection because the stipulations on Mesa's part were not carried out. The date set, as seen by Consul Dent's letter (p. 78) for meeting a vessel of Admiral Sampson's fleet was June 30 and the place twenty miles west of Cape Cruz. As a matter of fact the vessel was captured on June 27, when the witnesses on board all agree that she was making no effort to reach any point agreed on, but was proceeding directly on her voyage to Montego and from there to Kingston. It is thus established that, even had the agreement been made, as asserted by them and denied by Consul Dent, they had abandoned any intention of carrying it out. Consequently any protection which they might have claimed, resulting from their performance of the agreement is lost to them.

### *The Vessel Carried Contraband.*

It appears from the testimony of Beattie (p. 39) that the vessel was carrying a cargo of food stuffs chartered by one Flouriache. Mesa (p. 14) mentions rice, flour, corn-meal and coffee. Perez (p. 8) flour and Indian meal. Cole, the nominal master, (p. 10, interrogatory 8) evades answering the question and Perez, in his test affidavit (p. 20) says that the provisions were consigned to Beattie & Co. Consul Dent (p. 56) refers to the cargo as flour. On page 58, he gives an account derived from the admission

of Beattie as to what became of the flour, as follows (p. 58):

"I had also information from Mr. Arthur E. Beattie, and subsequently from Mr. Thomas Beattie, that the cargo was flour, and was landed in the warehouse of Bauriedel & Company, of Manzanillo, and from that warehouse transferred to the adjoining warehouse, which was the Spanish Government warehouse.

"Q. Have you any information from Mr. Beattie that that cargo of flour was delivered to Spanish authorities?

"A. The information was, as I said, from both the Messrs. Beattie, that the flour was transferred by Bauriedel & Company, through a communicating way from their warehouse to the government warehouse, immediately upon its delivery. Mr. Thomas W. Beattie informed me that he saw, personally, the flour was transferred, being then in Manzanillo.

"Q. Had you any information from Mr. Arthur Beattie?

"A. Mr. Arthur Beattie gave the same information, but did not say that he saw the same personally transferred.

"Q. Do I understand you to state as a matter of fact that Arthur Beattie said that the flour was transferred to the warehouse of the Spanish Government?

"A. Yes; it was transferred from the warehouse of Bauriedel & Company to the warehouse of the Spanish government adjoining, in Manjanillo."

A noticeable reticence is observed in regard to this cargo and its destination in all the depositions *in preparatorio* and in those taken for the claimant. This accounts for the absence of the contract with Flouriache.

It is pertinent to inquire into the conditions at the port of Manzanillo at the time of the landing of this cargo of flour and other food supplies. The Appendix to the Report of the Bureau of Navigation of the Navy Department for the year 1898, published as an official document and

therefore within the judicial notice of this court, shows that this was an important naval and military station under control of the enemy and containing so large a force that no less than four separate naval engagements took place in and about the port with a view to sinking the naval vessels and destroying the fortifications there.

On page 227 is the report of the commander of the expedition of the engagement of June 30, 1898, in which the United States naval vessels *Hist*, *Hornet* and *Wompatuck* took part. They were met by fire from gunboats, from shore batteries, and from soldiers on shore, and on account of serious damage to the *Hornet*, although three Spanish vessels were sunk in the engagement, the American vessels were obliged to withdraw, the *Hornet* being taken in tow. The second engagement on the next day (p. 223) was on the part of the *Scorpion* and *Osceola*, which were opposed by five armed vessels and five batteries having many guns, some of them large, and by musketry all along the shore. This resulted in the withdrawal of the attacking vessels. The third engagement was on July 18, 1898 (p. 261), when the attacking squadron consisted of all the vessels participating in the two former attacks reinforced by the *Wilmington* and *Helena*. The result was the destruction of ten Spanish vessels, in spite of a vigorous fire both from these and from shore batteries and from musketry. The last engagement was on August 12, 1898 (p. 301), when the port was attacked by the *Newark*, *Resolute*, *Suwanee*, *Hist*, *Osceola* and *Alvarado*. A vigorous fire was opened by these vessels, and this was returned by shore batteries. The impending capture of the port was avoided by receipt of news of the protocol of peace.

In a report made by Lieut. Lucien Young, commanding the *Hist*, which took part in three of these engagements (*Id.* p. 299), it appears that about five thousand armed Spanish

troops were in Manzanillo. It thus appears that this was an important fortified place containing a large number of troops, important fortifications and many vessels of war. It is a place which would require for the subsistence of these troops a large amount of flour and other provisions, and there can be no doubt that the voyage of the *Benito Estenger* was for the purpose of supplying the needs of the garrison.

In the case of the *Jonge Margaretha* (1 C. Rob. 192) it was decided by Sir William Scott that provisions are contraband when intended for the military use of the enemy. This case is approved and the doctrine sustained in *The Commercen*, 1 Wh. 382, in an opinion by Justice Story as follows:

"By the modern law of nations, provisions are not, in general, deemed contraband; but they may become so, although the property of a neutral, on account of the particular situation of the war, or on account of their destination. 1 Rob. 189. *The Jonge Margaretha.* If destined for the ordinary use of life in the enemy's country, they are not, in general, contraband. But it is otherwise if destined for military use. Hence, if destined for the army or navy of the enemy, or for his ports of naval or military equipment, they are deemed contraband."

In *The Peterhoff*, 5 Wall. 28, this court by Chief Justice Chase, said (p. 58):

"The classification of goods as contraband or not contraband has much perplexed text writers and jurists. A strictly accurate and satisfactory classification is perhaps impracticable; but that which is best supported by American and English decisions may be said to divide all merchandise into three classes. Of these classes, the first consists of articles manufactured and primarily and ordinarily used for military purposes in time of war; the second, of articles which may be and are used for purposes of war or peace, according to circumstances; and

the third, of articles exclusively used for peaceful purposes. Merchandise of the first class, destined to a belligerent country or places occupied by the army or navy of a belligerent, is always contraband; merchandise of the second class is contraband only when actually destined to the military or naval use of a belligerent; while merchandise of the third class is not contraband at all, though liable to seizure and condemnation for violation of blockade or siege."

Under these conditions it can not be said that the claimant has shown the innocent purposes of the cargo. Even were the vessel of itself *bona fide* neutral, the carrying of contraband would warrant its condemnation.

It is to be noted also, although the President's proclamation of blockade was not issued until June 27, yet Consul Dent had notified Mesa, before he started on his voyage, of the existence of a *de facto* blockade.

### *Conclusion.*

An examination of the whole record in this case discloses an entire want of that frankness which the authorities declare must be the special attribute of a claimant seeking release of a captured vessel. The refusal to disclose the facts of the transfer, the claimant's admissions, the unchanged position of Mesa, the relations between Cole, the nominal, and Perez, the actual master, the silence as to the purpose for which the cargo was intended, the pretended purpose of meeting Admiral Sampson, all these facts destroy any possibility of *bona fides* in the case and make clear the duty of the court to sustain the decree below. The words of Justice Story in the note by him appended to 1st Wheaton, 494, are directly applicable to this case:

"If upon further proof ordered, no proof is adduced, or

the proof be defective, or the parties refuse to swear, or swear evasively, it is deemed conclusive evidence of hostile interests or of such misconduct as authorizes condemnation."

It may well be said of the claimant in this case as was said by Chief Justice Chase in *The Peterhoff*, 5 Wall. 62:

"We must say that his conduct was inconsistent with the frankness and good faith to which neutrals, engaged in commerce open to great suspicion, are most strongly bound."

GEORGE A KING,
WILLIAM B. KING,
*Proctors for Appellee, on behalf of Captors.*

[illegible]

[illegible]

[illegible]

[illegible]

OCTOBER TERM, [illegible].

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THE STEAMSHIP "BENITO ESTEBAN," Arthur Elliott Beattie, claimant, appellant,

v.

THE UNITED STATES.

No. [illegible].

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APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF FLORIDA.

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BRIEF FOR THE UNITED STATES AND THE CAPTORS.

# In the Supreme Court of the United States.

OCTOBER TERM, 1899.

THE STEAMSHIP "BENITO ESTENGER," Arthur Elliott Beattie, claimant, appellant,
*v.*
THE UNITED STATES.

No. 192.

***APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF FLORIDA.***

**BRIEF FOR THE UNITED STATES AND THE CAPTORS.**

## STATEMENT.

The vessel was captured by the U. S. S. *Hornet* on June 27, 1898, off Cape Cruz on the south coast of Cuba, and was brought into the port of Key West and duly libeled on July 2. On July 16, the depositions *in preparatorio* were taken of Baldemero Perez, who stated that he was the master of the vessel; of Edwin Cole, who confirmed this statement of Perez, but can not say

who appointed him, because he was on the ship when Cole himself came on board; yet nevertheless says in answer to the sixth interrogatory, "I was master of the vessel;" of Enrique de Mesa, who also calls Perez master of the vessel, and says that he himself was on board in the capacity of supercargo; and of the purser, José Perez. (Rec., pp. 7–19.) A claim and test affidavit were thereafter filed by the master, Perez, on behalf of the claimant as a British subject residing in England and the true and *bona fide* owner of the vessel; and a test affidavit in the same behalf was also filed by Mesa, who alleged therein that the said steamer had been owned by Gallego, Mesa & Co., a firm doing business in Santiago (where Mr. Mesa also resides), composed of natives and residents of Cuba of which he was a member, and that the steamer was afterwards owned by him and, being so owned, was, on or about the 14th of June, 1898, sold by him to the claimant for the sum of $40,000, for which he executed a proper bill of sale, being at the time indebted to the firm of Beattie & Co., of which the claimant was a member, and receiving credit for a large part of the consideration on the indebtedness (pp. 19–23).

The cause was then heard upon the libel, the depositions *in preparatorio*, and the test affidavits, and by decree filed August 1, 1898, it was ordered that both claimants and captors have sixty days in which to take further proof (p. 24). Accordingly further proof was taken by commission upon interrogatories and cross-interrogatories, and the witnesses so examined were the British collector of customs at Kingston, Jamaica, who was also shipping master and registrar of shipping at

that port (p. 30); the manager and the accountant of the broker at Kingston, who negotiated the alleged sale from Mesa to Beattie (pp. 33-35); the claimant (p. 37), and the brokér in question (p. 44). To the collector's testimony were attached as exhibits the bill of sale which was asserted to have been made (p. 48), and the certificate of the vessel's classification under her British register, to which is appended the claimant's declaration under oath that he is entitled to be registered as owner, and that no person not qualified to be the owner of a British ship is entitled as owner to any interest whatever, either legal or beneficial, in the same (p. 49).

On behalf of the captors the testimony of Louis A. Dent, consul of the United States at Kingston during the Spanish war, was taken by oral examination under agreement between the United States and the claimant (pp. 54–75), and to this testimony was attached (pp. 76–80) copies of certain correspondence passing between Mr. Dent and Rear-Admiral Sampson. Thereafter the cause came on for final hearing, and after argument the court, upon December 7, 1898, entered a decree by which the vessel was condemned and forfeited to the United States as lawful prize as enemy property, notwithstanding the claim filed, and it was ordered that the vessel and cargo should be sold, in accordance with law (p. 24). The claimant then took this appeal, assigning as error (p. 25) the failure to hold that the *Benito Estenger* was a British merchant ship, duly documented and entitled to the protection of the British flag, and was lawfully owned and registered in the name of a British subject domiciled in Great Britain; and that the *Benito Estenger*

was engaged on a voyage on behalf of the local Cuban Junta of Kingston, allies of the United States, and that when captured she was in the service of the United States and, being thus employed in friendly offices to the forces of the United States, was not lawful prize of war.

## THE FACTS INVOLVED.

The depositions show that the master was a Spanish subject, born in Spain and living with his family at Manzanillo; that he had been appointed master by Mesa before the ship was sold, and that he was afterwards continued in his post by Mr. Beattie. The crew were Spanish; the vessel was sailing under the English flag, although there was a Spanish flag on board and a Cuban flag as well, the property of Mesa. The documents which she appears to have carried at the time of capture were the English documents, including the British registration, the ship's articles of agreement, the custom-house clearance, bill of health and log book (p. 11), which are now on file in court and show that the *Benito Estenger* cleared regularly from the port of Kingston, Jamaica, on June 23, 1898, as a British vessel. The voyage on which she was captured began at Kingston on the 3d of June, and the vessel thence proceeded with a cargo of rice, flour, corn meal, and coffee, to Manzanillo, where the cargo was discharged. She cleared from Manzanillo at 2 o'clock a. m. on June 27, and was captured about 5 a. m. on the same day off Cape Cruz. The return voyage was to have ended at Montego Bay, a port on the north shore of Jamaica. There was no cargo on board at the time of capture, and the only passengers were a

servant of Mr. Mesa and a former captain of the vessel, a Spaniard, who was taken on board at Manzanillo and was proceeding to Kingston and thence to Europe (pp. 7-12). Mesa says (p. 13) that he himself was on the vessel when she was seized, in the capacity of supercargo, and was in charge of the vessel by the request of the owner, and it seems from his reply to the seventh interrogatory that it was proposed to take another cargo from Montego Bay to Manzanillo, because he says that this voyage was to have ended at Montego, and then adds: "We were to load at Montego Bay and go back to Manzanillo." Mr. Mesa's own account of the transfer to the claimant is that Mr. Beattie bought the vessel from the firm, Gallego, Mesa & Co., of which the witness is a member; that there was a public bill of sale made in the presence of witnesses on the 1st day of June, 1898, at Kingston, and that there was no other engagement than that appearing on the bill, and that the claimant had been in possession since June 1. He says that the sale was made for the reason that the situation was so grave that his family were compelled to sell in order to get money to live on; that the price was $40,000, which sum has already been paid. It appears that there was no charter party for the voyage; that the vessel was not insured, and that all the documents, including the bills of lading taken on at Kingston, were delivered to the prize master (pp. 14, 15). The purser knows that Mr. Beattie was the owner, because when he came on board he was introduced as the owner and gave orders. The purser says that the transfer to Beattie was made between the 10th and 14th of June at Kingston; that he does not know what sum of

money was paid, but he, like the other witnesses, believes it was a legal sale, and that if the ship were restored she would belong to the person asserted to be the owner, and to no one else; and he says that Mr. Mesa told him that he had sold the ship for the support of his family.

In the test affidavits the master, Perez, states that, although born in Spain and living in Manzanillo, he was a sympathizer with the cause of the Cuban insurgents; that the *Benito Estenger* left Manzanillo for Kingston about the 4th or 5th of June, Mr. Mesa, the owner, being on board, and she arrived at Kingston about the 7th of June, and while there was sold by Mr. Mesa to Mr. Beattie, which he knows because Mr. Beattie came on board and informed him that he could remain as master, but it would be necessary for him to put an English subject on board as first officer or second captain, in conformity with British law—this refers to the witness Cole—that the vessel left Kingston on June 23 for Manzanillo with a cargo of provisions consigned to the order of Beattie & Co., with Mr. Mesa as supercargo; that on the voyage from Manzanillo Mr. Mesa informed him that he would communicate with Admiral Sampson at Santiago if possible, and after the seizure he heard Mr. Mesa request the officer of the *Hornet* to take the steamer to Admiral Sampson.

Mr. Mesa himself found it necessary or desirable to file his own test affidavit on the claimant's behalf, from which it appears that the *Benito Estenger* was first owned by his firm and then by himself, although he does not say when it passed from the possession of the firm to his individual possession; that up to about April 4, 1898,

she had been running coastwise between Cuban ports under the Spanish flag; that he was a prominent adherent of the Cuban cause and many of his relatives were connected with the insurgents, and having lost much of his property during the war, and fearing that the vessel might be seized by the Spanish Government, on June 2 he took her over to Jamaica from Cuba with the intention of disposing of her at once, and placed her in the hands of Mr. Orrett, an attorney and broker of Kingston, informing him that he thought the vessel could be sold to Beattie & Co., who, as he had learned before leaving Cuba, needed a larger vessel than the one already owned by them for bringing supplies from Jamaica to Cuba for the families living on their sugar estates near Manzanillo (p. 20); that accordingly, on or about June 14, Mr. Orrett negotiated a sale of the vessel to Arthur E. Beattie, of the firm of Beattie & Co., for the sum of $40,000, for which, or a large portion of which, credit was given on indebtedness of Mesa to the firm of Beattie & Co.; that after the sale the vessel was put on the route between Jamaica and Manzanillo for both the freight and passenger trade until arrangements could be made to run her regularly in their plantation trade to Jamaica; and that he, Mesa, was employed by Mr. Beattie to go on the vessel as his representative and business manager. The affidavit then alleges that the American consul at Kingston, having learned in some way that Mr. Mesa contemplated the building of docks in the harbor of Santiago, and with that view had procured extensive drawings of the harbor, sought an interview with Mr. Mesa, to which the latter took Mr. Beattie as a Cuban

sympathizer, and that after conversation on the subject of the plans and soundings of the harbor of Santiago Mesa made and submitted plans and marked out a place suitable for the landing of the American forces in the battle of Santiago, and that thereupon it was agreed between Mesa and the consul (who was informed by Mr. Beattie that the *Benito Estenger* would sail shortly for Manzanillo and return thence to Jamaica), that on her return Mesa should go up to Santiago and meet Admiral Sampson, and that on the return trip accordingly (for which about sixty refugees had been booked for Jamaica, who shortly before the vessel departed had been prohibited from leaving by the Spanish Government), it was understood by all the officers on board, who were also Cuban sympathizers, that the vessel would wait for Admiral Sampson's fleet for the interview referred to in conformity with the agreement with the American consul. Deponent, therefore, upon capture requested to be taken to the admiral, but this was refused by the boarding officer; upon which facts Mr. Mesa claims that at the time of the seizure the steamer was to all intents and purposes in the service of the United States Government.

The further proof showed, by the customs and shipping official at Jamaica, that Mr. Beattie applied for a British register and lodged with the officer the bill of sale in conformity with British law, and made a declaration of ownership before him as registrar of shipping, which documents were filed on the 9th and 14th of June, 1898, respectively, and are in conformity with the requirements of British law (pp. 30, 33). It was shown by the manager and the accountant of the broker who

conducted the sale of the vessel that early in June, 1898, while the *Benito Estenger* was lying in the harbor at Kingston, Mr. Mesa informed the broker that he desired to sell his vessel, and returned some days later to the witness's office with Mr. Beattie, and stated that he had sold the steamer to Mr. Beattie for £9,000, the sale being consummated on the 9th of June; that some years before the *Benito Estenger* had been engaged in trade between Santiago, Haiti, and Jamaica, and when withdrawn from that trade was stated to be engaged in coast trade between Cuban ports; that Mr. Mesa himself agreed with Mr. Beattie for the sale of the vessel, and the broker did not finally represent either party to the transaction; and Mr. Mesa having concluded the sale himself, the witnesses, therefore, while they state that the agreed price was £9,000, and believe that the sale was *bona fide*, are unable to say what arrangements were made for the payment of the price or how and in what shape the purchase money was paid. The accountant stated that after the sale Mr. Beattie went on board and took possession of the vessel and informed the officers in charge that he had become the owner, and gave orders regarding her, and informed the witnesses that he had given Mr. Mesa the position of supercargo (pp. 33–37).

By Mr. Beattie, the claimant, it was shown that he was a member of the firm of Beattie & Co., composed of himself and his brothers, all of them British subjects, the sons of a former British consul at Santiago, and that he and his brothers are jointly interested in possessions in Cuba, consisting of lands, sugar estates, mines, and forests in the district of Manzanillo, and that his own

occupation was the attending to the business of the sugar estate; that he had resided at Manzanillo for some years, returning to his parents' home in England on different occasions for several months at a time; that he had concluded the purchase of the *Benito Estenger* from Enrique de Mesa on June 9, 1898; that she left Jamaica on her last voyage on June 23, bound for Manzanillo and chartered by Flouriache, a Cuban merchant, carrying a cargo of food stuffs, sent for the purpose of trade; that the intended voyage was communicated to the United States consul before the departure of the vessel from Jamaica; that he had discussed the question with the consul, who led him to believe that such a voyage would be in order; that previous to the sailing, Mesa and witness had an interview with the United States consul, when Mesa gave the consul the plans of the harbor of Santiago and of the province, whereupon the consul proposed that Mesa with the ship should meet Admiral Sampson after the discharge of the cargo, and should be off Cape Cruz on June 30, for the purpose of meeting a vessel of the United States to convoy the *Benito Estenger* to the Admiral's fleet then blockading Santiago, to which the claimant as owner consented, impressing upon Mesa the importance of keeping the appointment, and upon the consul the necessity resting upon the latter of prohibiting him (Beattie) as owner of the vessel against a breach of neutrality laws; that he had gone to the interview solely to act as interpreter for Mesa, and at his request; that the consul assured him that his interests as owner of the *Benito Estenger* would be protected; and that because of the capture on June 27 there was no op-

portunity of keeping the appointment made with Mesa and the witness for the 30th; that the vessel had been engaged in no transactions unfriendly to the United States, and had held no communication in any way with the Spanish authorities, either in Cuba or Jamaica, relative to the cargo or the voyage; and that the witness would not have permitted the vessel to sail from Kingston for Manzanillo unless he had been assured of the protection of the United States. In response to cross-interrogatories, claimant stated that he had gone to Jamaica with Cuban refugees on June 2, not wishing to share the fate of many pacificos, and that the business in connection with his Cuban estate is transacted in Jamaica; that the *Benito Estenger* had previously been engaged in the passenger trade between Guantanamo and Santiago, sailing under the Spanish flag. Referring again to the sale, he said that he learned that Mr. Mesa wished to sell the vessel; and he subsequently offered her to him; that he bought her for £9,000, and that a formal bill of sale was then executed and he was put in possession; but he declines to say of what the payment or payments of the purchase money consisted, although stating that the sale was *bona fide*. Since the commencement of the Spanish war he had been engaged in endeavoring to keep his business together; had never bought or sold any supplies from or to the Spanish Government or to anyone in its behalf, and had transacted no business in Cuba since the beginning of the war, with the exception of carrying refugees on another steamer, owned by him, from Manzanillo to Montego Bay on June 2, and would have left earlier than that date if he had been permitted to do so

by the Spanish authorities; that the officers of the *Benito Estenger*, after he became the owner, were: Captain, Edward Cole, a British subject, appointed by himself, and the former officers, whom he continued in their posts, the former captain, however, Perez, going as second mate and pilot, and Mesa, whom he had appointed supercargo (pp. 37–44).

The ship broker stated that he was an old correspondent of Mesa's firm (Gallego, Mesa & Co., of Santiago); that Mr. Mesa is a Cuban, sympathizing warmly with the Cuban cause, and has always been in favor of the annexation of Cuba to the United States. This witness inferred—because of his experience as a ship broker of the difficulty of transferring a vessel to the British flag and obtaining a British register, as illustrated by the refusal of registry to another vessel by the registrar of shipping about this time—that since the transfer of the flag was effected in the case of the *Benito Estenger*, the sale must have been a *bona fide* one, Mr. Goldie, the collector of customs and registrar of shipping, being a scrupulous and careful official. This witness also states that the vessel on the voyage in question from Kingston was chartered to one Solis, who, he thinks, was a Cuban, and Mr. Mesa, as supercargo, informed him that the cargo was intended for the Cubans. The broker also states that Cole was appointed master upon his recommendation to Mr. Beattie; that he, witness, had been impressed in all his conversation with Mesa and Beattie that they were ardent supporters of the Cuban cause and would spurn to do anything inimical to the interests of

the United States, and that the Spanish authorities had been inimical to the firm of Beattie & Co. in Cuba (pp. 44–47).

The United States consul at Kingston, Mr. Louis A. Dent, testified that in conversation with the claimant a few days after the *Benito Estenger* left Jamaica, he suggested that the change of flag of the vessel was fraudulent, and that Mr. Beattie, by having sworn to the declaration of ownership, rendered himself liable to prosecution under the British merchant shipping act, which Mr. Beattie did not deny, but replied that he had signed the declaration to oblige Mr. Mesa, who was an old friend. Subsequent to the seizure the consul had another conversation with Mr. Beattie, in which he asked him the direct question, whether the charge that the transfer was fraudulent was not correct; that Mr. Beattie was much disturbed and said that he realized the position in which he had placed himself, and regretted it very much; that he should never have been asked to sign the declaration; that he had not paid anything for the vessel, but that his claim was that the vessel was really his, having been given to him absolutely by Mr. Mesa, upon which the consul suggested that the gift was to be returned after the war was over and was made for the purpose of effecting a transfer and protecting the vessel, which Mr. Beattie admitted to be true. Consul Dent also testified that near the time of the alleged transfer, but subsequent thereto, he had two conversations with Mr. Mesa, the first of which, however, may possibly have been a day or two before the transfer, in which Mr. Mesa, accompanied by Mr. Beattie,

called upon him and requested a pass for the vessel which would enable him to enter a Cuban harbor; that he refused to give this, stating that it was not within his power to give him a letter which would be in the nature of a permit or pass through the blockading vessels; that the conversation turning on the character of the country in the neighborhood of Santiago, and Mr. Mesa stating that he had an old Government plan of the province and a specially prepared chart of the harbor of Santiago, at the consul's request he gave both of these to the latter; that he advised Mesa that Manzanillo was blockaded in fact, and that he would not be able to enter there, and that as Mr. Mesa claimed to have a special and intimate knowledge regarding the topography and character of the country surrounding Santiago, the consul had said to him that if Mesa would be at a certain point at a certain time, the Admiral, if he cared to avail of information from Mesa, might possibly send a vessel to take him to the fleet and there question him, and that after further conversation Mesa agreed to be at a point 20 miles due west of Cape Cruz on the morning of June 30.

In the next conversation between Mesa, Beattie, and the consul, which occurred a few days subsequently, Mesa spoke of his plans for the voyage in reference to meeting the Admiral, and again endeavored to extract a letter of protection from the consul, which was declined, the latter informing Mesa again that Manzanillo was blockaded, and that he would go there at his own risk, and Mr. Mesa left the consul with the understanding that he was not traveling under protection from him (pp. 54–57). Accordingly, on June 23, the date on

which the *Benito Estenger* left Kingston, the consul wrote a letter to Admiral Sampson (p. 77), in which he enclosed Mesa's plans and states that he knows nothing of Mesa personally; that he is a member of a large firm at Santiago, a man of property, and probably one of no special prejudices. He also states that Mesa offered his plans voluntarily with any information which he might be able to give relative to the country around Santiago, without compromising himself, and expected nothing in return but the prospect of peace and the resumption of his business. The consul then states the proposal for a meeting with the Admiral, naming a point 20 miles off Cape Cruz, due west, where a cruiser could pick the vessel up, ostensibly for examination, but really for an interview if the Admiral desired it, and he named the date for the appointment, Thursday morning, June 30, and suggested that if the Admiral cared to avail of the plan, he could send a vessel to the point named. He distinctly declines to recommend Mesa to the Admiral, and suggests that in dealing with a man in Mesa's position imposition is always possible. He then refers to the statement of the president of the local Cuban Junta at Kingston, which he rather believes to be the fact, because the president of the Junta had said that to avoid seizure of the provisions by the Spaniards they were to be sold before being landed from the ship. Notwithstanding this latter impression, stated in his letter, the consul, however, testified (p. 58) that the claimant and his brother informed him, evidently after the statements made to him by the president of the Cuban Junta, that the cargo was landed in the warehouse of

merchants at Manzanillo adjoining the Spanish Government warehouse, to which it was subsequently transferred, the claimant's brother stating that he personally saw the flour thus transferred. The consul also testified (p. 60) that the statement in Mesa's test affidavit that he went to Jamaica with the intention of disposing of the vessel to Beattie & Co., is untrue, because in the first conversation with Mesa, referred to above, Mesa had said that he left Cuba with the vessel with the intention of taking her down to the eastern islands of the Caribbean Sea for the purpose of doing business with her or of disposing of her.

The consul repeats, on cross-examination (p. 68), his statement that he had warned Beattie and Mesa that there was a blockade in fact at Manzanillo, and says that Mesa left Jamaica two or three days earlier than he understood the vessel would leave, and omitted an intended call at Montego Bay for more cargo, which surprised him, because if Mr. Mesa had followed the plan which he had announced he would not have been at the point of capture three days previous to the date of the appointment, viz, on June 27; and the fact that he did not carry out his plan fixed in the consul's mind the impression that Mesa had no intention of being at the point specified. On the suggestion being made to him by the claimant's counsel that after the arrangement made it was not a proceeding in good faith to effect the capture, the consul reasserted strongly his refusal to give Mesa a permit or letter to the Admiral; that his own letter to the Admiral was in order to test Mesa's good faith, so that if he, Mesa, concluded to make the trip, he could

have the opportunity to present his case to the Admiral and let the Admiral decide his right to make the voyage; that the entire plan was at Mesa's own risk and venture, and that the latter did not keep good faith, because he did not keep the appointment, but went into Manzanillo and was captured three days before the time set for the appointment (p. 69). The consul's entire thought in the matter was that Mesa should seek the meeting with the Admiral before endeavoring to enter any Cuban port, in order to ascertain just what the Admiral would permit him to do (p. 71). Upon further examination, the consul reiterates his statement that there was never at any time any semblance of an agreement between Mesa and himself, or any effort on his part to persuade Mesa to any particular course, Mesa laying his own plans and following his own judgment and wishes. The suggestion to Mesa was not that he should follow a certain course with his vessel, but, on the assumption that she would depart on the proposed trip in any event, that Mesa should, in the execution of his own plans, be at the point suggested at the time specified (pp. 73, 74). The consul, however, (id.) shows that he considered it possible that Mesa, in the pursuance of his own intention, might get into Manzanillo and succeed in landing his cargo and be off Cape Cruz on June 30 upon his return trip. He also repeats that it was Mr. Mesa's desire, and not his own, that Mesa should meet Admiral Sampson, and the letter to the Admiral was written at Mesa's solicitation and suggestion. The letter of Admiral Sampson to Consul Dent (p. 76) and the

other letters of the consul to the Admiral (pp. 79–80) contain nothing more of special significance in the case, although the Admiral's letter shows that he was making every effort to stop generally the blockade-running on the south coast of Cuba, and both his letter and the consul's letters refer to the case of the *Adula* particularly. The consul's letters of June 21 and 22 show that he had made efforts to prevent the departure of the *Benito Estenger;* that he knew that the *Benito Estenger* was about to sail, and that he had endeavored to prevent her departure and the departure of other vessels engaged in similar trade, namely, the carrying of provisions for a Spanish destination.

As the claim rests largely in assertion, the foregoing full abstract of the testimony seems desirable.

## ARGUMENT.

The main question involved here is as to the ownership of the vessel and the legality of the alleged transfer. The collateral questions relate to the Cuban sympathies of Mesa, who, the United States maintains, was still the owner at the time of capture, and to the assertion of service on behalf of the Cuban insurgents or the United States which Mesa and the claimant set up. Connected with the latter questions is the relation of the United States consul to the transactions which preceded the seizure of the vessel. It will be more convenient to dispose of the latter questions first, always keeping in view the principle that in a case of libel as prize of war the burden of proving the ownership of ship and cargo is

upon the claimants (*The Jenny*, 5 Wall., 183); and that on the production of further proof, if the neutrality of the property is not established beyond reasonable doubt, condemnation follows. (*The Amiable Isabella*, 6 Wheat., 1.)

I.

*The Spanish nationality and alleged Cuban sympathies of Mesa, the supercargo; the trade presented by the case as illicit intercourse with the enemy; the facts about Manzanillo as a Spanish stronghold.*

The very fact that it seemed important to the claimant to seek to show by the testimony of different witnesses that Mr. Mesa was really an adherent of the Cuban cause is an unconscious admission that his interest in the vessel was not entirely ended; but the fact is that he was a Spanish subject, engaged in business as member of a well-known firm at Santiago, and a man of means, who must necessarily have enjoyed a full measure of protection from the Spanish Government of the island and have been on terms of cordial and loyal adherence to their régime. At least, there is no evidence, except vague opinion and surmise, that he was either openly or secretly attached to the native Cuban cause. The allegation of sympathy with that cause is also made regarding the officers and crew of the vessel. This might be the case as to people in their walk of life, although engaged in a commercial service tributary to the Spanish operations, but it would not be especially significant, and there is really nothing in the record to support this contention on their behalf either. It is a well-known fact, consonant with

average human nature, that after the event of such a war there are many people in the same situation as the Vicar of Bray, who are quite ready to change their allegiance to the winning side, and are fully convinced that they were on that side from the beginning. No doubt, beside such people who were really loyal, but who now are willing to say that they were not, there were many thousand people in Cuba whose loyalty was only a profession and who were lukewarm to either side. Nevertheless, they all were Spanish subjects, and under the decisions of the court upon allied questions and in similar situations would properly be regarded as subjects of the enemy. There are numerous authorities for this rule in the decisions of the court. Political status, and not individual loyalty or disloyalty, is controlling on the question of enemy ownership. In war the belligerents and all their citizens and subjects are enemies to each other. In war all residents of the enemy's country are enemies. (*Jecker* v. *Montgomery*, 18 How., 110; *Lamar* v. *Browne*, 92 U. S., 187; *The Venus*, 2 Wall., 258; Prize Cases, 2 Bl., 635; *Mrs. Alexander's Cotton*, 2 Wall., 404; *Young* v. *United States*, 97 U. S., 39; *Ford* v. *Surget*, 97 U. S., 594; *The Amy Warwick*, 2 Sprague, 143; *The Hiawatha*, Blatchf. Prize Cases, 1.) And this is so without regard to the personal sentiments or dispositions of such residents (*The Peterhoff*, 5 Wall., 28), and applies even to citizens of a neutral country established in business in the enemy's country. Such must be regarded as enemies and their property as enemy property. (*The Flying Scud*, 6 Wall., 263.) We shall have occasion to refer again to the last rule.

It may well be that a person who was a professed and known insurgent, or openly belonged to that party, which was the patriotic cause and the one in alliance with us, would be relieved in a similar case from the penalty of prize law, but such a person would not have been engaged in the business which resulted in this seizure, and there would be no equivocal aspect in his relations. The most that can be said for Mr. Mesa is that his relation was doubtful and half-hearted, and nothing short of proof that he was a Cuban rebel to Spain and not merely a Cuban subject of Spain would suffice to aid him.

As to the business on which the vessel and he as supercargo were engaged, it was merely one of many ventures by which provisions were carried to the Spanish city of Manzanillo, or to the adjacent city of Cienfuegos, for the relief of the Spanish forces and population.

There is another reason why the plea of Cuban adherence would not aid Mr. Mesa. It has been determined that trading with the enemy, except by license, subjects the property to confiscation; that this rules applies to *allies;* that the interposition of a prior neutral port makes no difference as to the illegality of such trade. (*The Rugen*, 1 Wheat., 62; *Jecker* v. *Montgomery*, 18 How., 110.)

It is not necessary to dwell much on the suggestion that the cargo of provisions was dispatched at the instigation of the Cuban Junta in Kingston, and therefore that it must have been intended to elude the Spanish authorities and reach the Cuban forces, or the distressed Cuban population, mostly women and children, on Mr. Beattie's plantation or other plantations in that locality,

whose husbands and fathers were in the Cuban army. That is at most a mere suggestion, and if true was capable of being proved, and was not especially relevant, for, without imputing any double-dealing to officers of the Cuban Junta, it is too far to seek to speculate here inferentially upon the suggestion as to what purposes they had in mind, or what plans or schemes they might have been furthering. The undoubted evidence is that a cargo of provisions was dispatched, after warning that the United States naval forces were on blockading duty off the south coast of Cuba, that Manzanillo itself was in a state of blockade in fact, and that the vessel would not be allowed to pass. This sort of trade was carried on in many instances during the Spanish war, especially from Jamaica, and was a trade which the United States, for obvious reasons, sought to prevent and terminate by the efforts of our consular officers and the activity of the vessels of our fleet on their blockading stations. The trade was directed to ports like Manzanillo and Cienfuegos, well known to be in the absolute and secure control of the Spaniards, where they had garrisons and fortifications and where the distribution of food for the use of the forces of the enemy naturally and evidently took place. Apart from the direct evidence in the record as to the destination of the food supplies carried by the *Benito Estenger*, there is a fair,—indeed, a necessary presumption, that the Spanish authorities, in the conditions notoriously prevailing at that time in Cuba, and with the constant diminution of food supplies, would seek to obtain provisions, and

would control and use, on the ground of military necessity for the Government needs, all supplies arriving. Therefore, to take provisions to a city like Manzanillo was well known to be a highly profitable business. There may have been no technical breach of blockade in this case, and provisions may not generally be looked upon as contraband of war, but the trade, by whomsoever carried on, to such a port, was with the stronghold of the enemy, fortified and garrisoned and practically beleaguered and besieged. It was trade which the United States in the exercise of belligerent rights was entitled to destroy, being, in view of the laws of war, illegal and contraband trade, in the sense of illicit intercourse with the enemy; and, at any rate, was prohibited by the intention and effect of the belligerent operations of the United States. It was professedly a trade of danger and hazard, else why did Mr. Mesa wish a pass and, failing to obtain that, seek to have an interview with the Admiral in order to obtain his protection? Here was no innocent neutral trader carrying an ordinary commercial venture to an open port of the enemy for sale through the ordinary channels of trade, but a Spanish subject conducting as supercargo a vessel which a few days before had been his own Spanish vessel (to lay aside for a moment the question of the validity of the transfer), manned by Spanish subjects and carrying on board, although not flying, the Spanish flag, and sailing with provisions to a strongly fortified town, notoriously in Spanish control, after warning that a permit would not be given, that the trade would not be permitted by the

American commanders who might be met, and that Manzanillo was in a state of blockade in fact. Moreover, the testimony of Mr. Beattie (p. 39) is that the vessel was chartered by Flouriache, a Cuban merchant, although Mesa and the master say (pp. 8, 14) that no charter party for the voyage was signed, while the broker Orrett testifies (p. 46) that the vessel was chartered by one Solis, who, he thinks, was a Cuban. Mr. Solis has appeared in the record in the *Aduda* case as the supercargo on that vessel; and Justice Story is authority for the propriety of referring in one prize case to the record in another prize case (Notes on Princ. and Prac. Prize Cts., pp. 26, 54). Further, Mesa stated in his test affidavit (p. 23) that the provisions were consigned to a firm of merchants at Manzanillo, and the captain that they were consigned to Beattie & Co. (p. 20), but Consul Dent states positively that both the claimant and his brother informed him that the merchants' warehouse adjoined the Spanish Government warehouse, and that the cargo was transferred by the merchants to the Government warehouse immediately upon its delivery, the claimant's brother having personally seen the transfer.

Now, it has been decided by the court in the case of *The Commerce* (1 Wheat., 382) that provisions destined for military use are deemed contraband of war, Justice Story saying:

> By the modern law of nations provisions are not, in general, deemed contraband; but they may become so, although the property of a neutral, on account of the particular situation of the war, or on account of their destination. * * * If destined for the ordinary use of life in the enemy's country they are

> not in general contraband; but it is otherwise if destined for military use. Hence, if destined for the army or navy of the enemy, or for his ports of naval or military equipment, they are deemed contraband.

Here we claim that neither the vessel nor the cargo belongs to a neutral, and that the property seized was enemy property; but the illegal nature of the trade and the hazard of Mesa's venture, which he showed that he well understood, fully appear, because even provisions are to be deemed contraband of war when destined for military use, although belonging to a neutral.

In *The Peterhoff* (5 Wall., 28) Mr. Chief Justice Chase, on pages 58, 59, shows the classification into which contraband may be divided, one of which is articles which may be or are used for purposes of war or peace, according to circumstances, and another of articles exclusively used for peaceful purposes; and his statement is that merchandise of the one class is contraband only when actually destined to the military or naval use of the belligerents, while that of the other is not contraband at all, though liable to seizure or condemnation for violation of blockade or siege. As to ulterior destination of merchandise, contraband or not contraband, respectively, he remarks:

> The latter is liable to capture only when a violation of blockade is intended; the former when destined to the hostile country, or to the actual military or naval use of the enemy, whether blockaded or not.

(See also Parsons Marit. Law, vol. 2, pp. 93, 94; 1 Kent Com., 140; *The Peterhoff*, Blatchf., *Pr. Cas.*, 463,

and auth. cit.; *The Jonge Margaretha*, 1 Rob., 189; *The Edward*, 4 Rob., 68; *The Frau Margaretha*, 6 Rob., 92; *The Ranger*, 6 Rob., 125; *The Zelden Rust*, 6 Rob., 93.) In the last-named case a cargo of cheese, with a nominal destination from Amsterdam to Corunna, was condemned as contraband on the ground that the vessel was actually or probably destined for Ferrol, which was on the other side of the bay and was a port of naval equipment; Corunna also being a port of naval equipment, though not to the same extent as Ferrol.

Food for the support of an army is undoubtedly used for purposes of war, although under other circumstances the use would be for peaceful purposes, and therefore the cargo of this vessel, if the vessel had been seized before the cargo was discharged, would have been valid prize, whether Manzanillo were blockaded or not. And the cargo would have been valid prize also, under the circumstances (as the vessel actually was), on the ground of trade with the enemy—as a species of that illicit intercourse which Chief Justice Chase in the *Peterhoff* case calls "unneutral participation in the war." But while condemnation of the vessel is not sought on the ground of blockade-running or merely because of the taint of a contraband cargo which had been discharged, these aspects of the transactions are pointed out to emphasize the illegal and hazardous nature of the vessel's venture, of which, as the record fully shows, all the persons interested in her were fully aware, notwithstanding their professions of innocence or of disinterested service to the Cubans and the United States. If not, we ask again why did Mr. Mesa wish a pass or permit? Why did he

wish to see the Admiral? Does he expect the court to believe that his only object was to reveal, for the benefit of the United States and to the disadvantage of his sovereign, facts of more or less importance about the harbor of Santiago, the topography of the surrounding country, and available landings for troops? It may be that he does not object to disclose himself as trafficking or willing to traffic with all the parties to the contest; but that will hardly convince the court.

There is no evidence in the record of the condition of affairs at Manzanillo in relation either to its being under a state of actual blockade, as Mr. Dent says that he had been informed, and of which he had warned Mesa and Beattie, or in reference to its condition as an important point fully under Spanish control and the seat of offensive and defensive military operations. It is the first important place on the south Cuban coast on the stretch between Santiago and Cienfuegos, and lies inside the bay or bight formed by the promontory which Cape Cruz terminates, and about 60 miles northeast of the cape. Cape Cruz is almost due north from Montego Bay on the northwestern shore of Jamaica, and about 75 miles distant, while Kingston is on the southeastern Jamaican coast. But official reports show fully the state of the case in these respects at Manzanillo.

A letter from the Secretary of the Navy to the commander in chief of the United States forces on the North Atlantic Station informed the latter of the Department's desire that he should maintain a strict blockade of Cuba, particularly the ports of Habana, Matanzas, and, if possible, of Santiago de Cuba, Manzanillo, and Cienfuegos

because such a blockade might cause the Spaniards to yield before the rainy season was over. (Appendix to Report of Bureau of Navigation, p. 171.) The letter of Admiral Sampson in this record (p. 76) shows that he was endeavoring to stop blockade running on the south coast of Cuba, and that there was a large vessel with a heavy battery at Cape Cruz; this must necessarily have been chiefly for the purpose of preventing access to Manzanillo. Mr. Dent thinks that his conviction that there was a blockade in fact at Manzanillo came from information which he received from the Admiral through letters and through verbal messages by means of press dispatch boats which were frequenting Jamaica daily (p. 72); so that there was valid ground for Mr. Dent's warning to Mesa of a condition of blockade at Manzanillo, although an effective blockade at that precise point may not have been instituted and maintained until after the proclamation of June 27, by which the entire south coast of Cuba from Cape Cruz to Cape Frances was proclaimed to be under blockade.

In the Appendix to the Report of Bureau of Navigation at pages 227–235, 243, 244, 254, 261–266, 298–309, will be found reports of attacks by our naval forces at or near Manzanillo, which, it is true, began about the time of the seizure of this vessel rather than before, but which show what the situation was, as to past time as well, at Manzanillo as a Spanish stronghold and a rendezvous of the Spanish forces. It is clear that there were Spanish gunboats in the harbor and among the cays, and that there were blockhouses and extensive fortifications of the army on shore. Points of land in the vicinity were

found to be "alive with soldiers." In addition to numerous gunboats of the enemy there were torpedo boats, which vessels were all armed with machine guns and 3 and 6 pounders, and were supported by heavy artillery on shore and to the rear by a battery of field artillery. One of the Manzanillo cays had a concealed gun. In the report of the first conflict between the forces of the United States and Spain, which occurred on June 30, 1898, the Spanish vessels sustained the attack of our vessels in a spirited and effective manner, and the recommendation of the officer commanding one of the vessels of the United States is that in order to put an efficient stop to the inside traffic among the waters and cays thereabouts "this stronghold of Manzanillo should be destroyed, and it would take a much larger force than I have at my command to accomplish it." (Report, etc., p. 229.)

It is not necessary to dwell in detail upon the various reports cited, but it is evident throughout them that Manzanillo was a large city; that it was defended by numerous vessels of war, one of them being a gunboat of about 1,000 tons, and by shore batteries. It is repeatedly called a "stronghold" by our officers. It was the terminus of a cable which connected with Santa Cruz del Sur, Trinidad, Cienfuegos, and Habana, which was cut by our forces in order to check the "inland traffic with Manzanillo" (p. 244) and to prevent the calling of reenforcements "now in the west to resist our outward attack and capture of Manzanillo." The Report, on page 254, says that a captain of a British schooner, which was boarded and allowed to proceed, reported the people of

Manzanillo in a deplorable condition, "all the food obtainable being appropriated by the 4,000 troops there." On July 18 there was a second engagement, the object of which was to destroy the enemy's shipping, but not to engage the field and shore batteries or forts; and still later there was a bombardment of Manzanillo, as to which, the demand of the United States commander for surrender having been refused, the statement is made (p. 302) that the town, being fortified, is exempt from the privileges and immunities attached to defenseless places. At that time it appears that there were nearly 5,000 armed Spanish troops in the city (p. 299), and there is no reason whatever to doubt that there had been a force very nearly as large for a period long prior to the seizure of the *Benito Estenger*.

It fully appears from the foregoing that Manzanillo, like Santiago and Cienfuegos, was one of the most important of the Spanish strongholds, and was the headquarters of a large military and naval force. Even if Mr. Beattie and Mr. Mesa were endeavoring to take food supplies to such a place for the relief of the distressed and starving population, they were not well advised in running the risk of seizure and delay in payment, if not confiscation, because of military necessity; and again, if their real purpose and the ultimate destination of the supplies were as alleged, they certainly have not offered clear and satisfactory proof to that effect, evidence drawn from their own statements showing the contrary.

We therefore contend that the facts here show that Mesa was an enemy subject, carrying on a forbidden trade

with the enemy, and not an ordinary commercial trade, but trade with the forces and authorities of the enemy, by which they were enabled to continue and prolong the war. In *The Belle* (Blatchf. Pr. Cas., 294) it was laid down that previous notorious enemy ownership and illicit trade are sufficient to condemn the vessel where *bona fide* purchase and voyage are not shown. Property captured trading with the enemy is deemed quasi-enemy property. (*The Joseph*, 1 Gall., 545; *The Rapid*, 1 Gall., 295.) There are many other authorities for this doctrine. (Dig. Fed. Cas., pp. 2383, 2391.)

## II.

*The asserted agreement with the United States consul and the alleged service to the United States and the Cuban insurgents.*

It will be seen from the naval reports which have been cited that Manzanillo was the point to which many vessels, some of them neutral and others, besides the *Benito Estenger*, whose nationality and status were doubtful, resorted with their cargoes, and that the United States, through its naval commanders and its consular officers, was endeavoring to prevent and check this traffic. This record also refers to other vessels engaged in such trade, or similar doubtful ventures without cargo, some of them steamers, others schooners, and of different nationalities (pp. 62, 76, 79, 80). The United States consul very properly watched and reported this traffic, and endeavored, through diplomatic channels, to prevent it. The remarkable claim is set up that he went so far in

this course of proceeding and took such steps in regard to it relative to the *Benito Estenger* that he committed the United States to the protection of the vessel, on the theory that under an engagement with him she was really in the service of the United States. The simple facts of the case are as follows:

Mr. Mesa wished to obtain a permit or pass from Mr. Dent, which Mr. Dent had no right to give and which he declined to give. At Mr. Mesa's own solicitation or suggestion, Mr. Dent agreed to write the Admiral, and did write, stating that Mesa offered certain information which the Admiral might deem valuable and of which he might desire to avail; that he, Mesa, proposed to be off Cape Cruz on June 30, and could be picked up there by a United States vessel and taken to the Admiral for an interview if the Admiral so wished. It was distinctly understood that Dent gave no countenance to Mesa's plans for this voyage, but on the contrary warned him not to make it; that he did not bind either the United States or the Admiral in any way or to any degree, and that the whole proceeding was at Mesa's risk. The only understanding—so far as there was any understanding or agreement—was that Dent would advise the Admiral (which he did) that Mesa proposed to be off Cape Cruz on June 30. Mesa (p. 22) says that "it was agreed between the consul and deponent * * * that deponent would go up to Santiago and meet Admiral Sampson, and the consul would in the meantime advise Admiral Sampson, *if possible*."

Here is Mr. Dent's own story of the occurrences—to the question whether he had not as a matter of good

faith written to the Admiral, and, having received the plans and surveys of Santiago, made the suggestion that there should be an appointment to confer with the Admiral, by which is indicated the theory of the claimant that the vessel was unjustly entrapped by a breach of good faith, Mr. Dent says (p. 69):

> My answer is this: Mr. Mesa came to me and asked me to give him some protection. I refused to give him a permit, as already stated, and it was suggested that I give him a letter. I refused to give him a letter to the Admiral, as I did not have strong faith in the good faith of Mr. Mesa, and in order to test Mr. Mesa I agreed to this plan; that I said to him that if he wanted to go over there and make this trip, I would put it in his way to present his case to the Admiral personally, and then let the Admiral decide whether he could make the voyage, and that in order to do that I would write this letter direct to the Admiral which I would not give to him, and he could make the voyage at his own risk and venture and take the Admiral's decision if he saw fit. Mr. Mesa did not keep good faith, because he did not keep the appointment; went into Manzanillo, and was captured three days before the time set for the appointment. I state to you very frankly that my dealing with Mr. Mesa, in my official capacity, was naturally reserved and cautious, and that the plan already agreed upon was, as stated on my part, one which would test his good faith. * * * I claim that the entire transaction was a breach of faith on Mr. Mesa's part. As before stated, I told him that it would not be advisable for him to carry a cargo, because, in my judgment, the Admiral would in no event permit a cargo of that character to be landed in Cuba. Mr. Mesa's movements were left entirely

to himself, at his own risk, and the advantage which he was to obtain was by endeavoring to obtain the interview with the Admiral in the manner suggested.

Mr. Dent also says, being asked whether the suggestion for a meeting was based upon the assumption that Mesa's vessel would depart anyway, without regarding his warnings (p. 73):

> My suggestion to Mr. Mesa that he be at a certain point at a certain time was based upon the assumption that he could and would readily be there about the time specified in the natural course of carrying out his plans. The suggestion was not that Mr. Mesa should follow a certain course for his vessel, but that in the execution of his own plans he might conveniently be at that point at the time specified. * * * I will try and make myself clear. Mr. Mesa's plan was to go to Cuba and return to Jamaica, and in the course of that trip he would be in the neighborhood of a certain place at a certain time. The suggestion on my part was that, being near that certain place at that certain time, the point, being in the open ocean, must necessarily be fixed. My suggestion related only to the exact point at sea where he could conveniently be. In other words, I never made any suggestion to Mr. Mesa to make any plans whatever as a part of any agreement with me.

Mr. Dent's testimony closes with the statement that he was actuated by good faith and a desire to aid Mesa, and that any statement of Mesa, direct or by implication, that he was at any time guilty of bad faith toward him, or used any means to inveigle his vessel within the naval forces for the purpose of capture, is false (pp. 69, 73, 75).

It appears from other passages of Mr. Dent's testimony (p. 71) that his contemplation was that Mesa should meet Admiral Sampson before he attempted to go into Manzanillo, and on the other hand, on page 74, that he would meet him on his return, because Mesa would naturally be then in the neighborhood of Cape Cruz about June 30. This variation is probably explained by reason of the fact that the first proposal for the meeting was about June 20, before the *Benito Estenger* had left Kingston, when Mr. Dent would naturally think that Mesa would heed his warnings and would keep the suggested appointment before he went to Manzanillo, whereas after the vessel had left on June 23, which was the date when Dent wrote to the Admiral, he doubtless concluded that Mesa had determined to do just what he did, namely, go to Manzanillo first. Mesa probably had no intention whatever of keeping the appointment; what he desired to do was to land his cargo, and that having been effected he was proceeding as promptly as possible back to Jamaica for another cargo when he was captured near the place of rendezvous three days before the time set for it. There was, of course, no evidence whatever that Dent's letter to the Admiral was the moving cause of the capture or that the *Hornet* had been sent to lie in wait for the *Benito Estenger*, nor any evidence that the Admiral intended to avail of the suggestion made to him on Mesa's behalf.

Capt. Lucien Young, commanding the *Hist*, reports to the Rear-Admiral on July 2 (Bureau of Navigation Report, p. 227) that, arriving off Cape Cruz early on the

morning of June 30, in obedience to his orders, which related to stopping of the inside traffic west of Cape Cruz and to Manzanillo, he found the U. S. S. *Hornet*, under the command of Lieutenant Helm, cruising off the cape. That was three days after the capture, and there is nothing in the report to show that that had not been the station of the *Hornet* for some time. Certainly she was not sent there, on Dent's report, to intercept and capture the *Benito Estenger*. The letter of the Admiral dated June 25 (p. 76) speaks of a large vessel with a heavy battery at Cape Cruz, but does not say how long it had been there.

Thus the claim of an engagement with the United States, or of service to the United States, is simply baseless, and the suggestion is without relevancy and probably will not be regarded by the court as pertinent or important. If Mr. Dent's zeal had led him to step beyond his authority or to enter into an undertaking which was not justified, the United States would not be bound thereby, either in law or good morals, upon a just view of the case; but as the facts show that no engagement whatever was made, the *Benito Estenger* was captured in the ordinary course of cruising duty at a time and under circumstances when her character as prize was not to be denied. The movements of the vessel plainly showed that, the object of the trip having been accomplished, there was no intention to communicate with the Admiral, and there is no ground whatever for the claim that an agreement had been made which bound the United States to refrain from capturing the *Benito Estenger* as prize of war.

It has been determined that neither a United States consul nor the commander of an American vessel of war has authority by virtue of his official station to grant any license or permit which would have the legal effect of exempting the vessel of an enemy from capture and confiscation. (*Rogers* v. *The Amado*, Newb., 400.) And in the *Joseph* (8 Cr., 451) it was said that hostile trade is not excused by the necessity of obtaining funds to pay the expenses of a ship, nor by the opinion of an American minister, expressed to the master, that by undertaking the voyage he would violate no law of the United States.

## III.

*The question of the transfer of the vessel,* flagrante bello, *to a neutral claimant.*

We now come to the underlying question in the case, and that is whether the asserted transfer from Mesa to Beattie was legal so as to be entitled to recognition in a prize court, or whether it was merely colorable for the purpose of evading the penalty of condemnation as enemy property.

Mesa was a Spanish subject, born in Cuba and residing at Santiago, a member of the Spanish firm of Gallego Mesa & Co., which had owned the *Benito Estenger.* It is stated that the vessel had been transferred to Mesa individually, but when and how this initial transfer had taken place does not appear. The reason for the sale given by Mesa himself and attributed to him by other witnesses is that the situation of affairs was so grave that

he was compelled to sell in order to get money for his family to live on. Nevertheless, no money passed, Mesa saying that he received a credit for a large part of the consideration on indebtedness to the claimant or the latter's firm, while the claimant himself expressly declines to say of what the payment or payments of the purchase money consisted. The price given varies, some witnesses speaking of it as £9,000 and some as $40,000, a large difference. The formal papers appear to be correct, but this is necessarily so, or the question would not be debatable. The claimant's oath under the British laws as to registration is a solemn act, but here it will be regarded only as one element in the examination of the real facts, and its intrinsic meaning will be left to the claimant's conscience. The testimony of the United States consul is clear, positive, and reiterated that the claimant admitted that he had not really purchased the vessel; that the transfer was merely for the purpose of protecting her and her owner, just as he testified positively that the final destination of the cargo was admitted by the claimant and his brother to be for the Spanish authorities.

The broker and his clerks testified formally to their belief that the sale was *bona fide*, but they evidently knew nothing of the real transaction; had heard of the price agreed on, but did not know in what shape it was paid. So as to the other witnesses, who testified as to their belief on the subject and the insignificant grounds thereof. There was no evidence beyond the doubtful assertions of Mesa and the claimant that any consideration whatever passed, and while some stress is laid upon

the scrupulous and careful character of the British registrar of shipping and collector of customs who issued the vessel's documents, his vigilance and care would not require, nor in a sense permit him to pass beyond the situation presented to him by papers regular on their face, positive in their formal statements, and substantiated by oaths to which he would naturally attach, in view of the importance and standing of the parties, and especially of the claimant and his house of trade, more than ordinary significance. There was, then, no reason apparent to him why he should not have full confidence in the statements made to him, however carefully he viewed his duties; and his general attitude toward the parties in their transaction would quite naturally, under the circumstances, be favorable.

The former Spanish master and crew remain in charge; an English subject goes on board, who appears in one portion of the evidence to have been intended as the master and in another as mate or an agent of the new asserted owner; Mesa himself goes on the voyage as supercargo. The vessel's trade remains about what it was before; or if the Jamaican part of it is a new feature, it only adds a more doubtful element, taken in connection with the well-known and repeated ventures of the same character of other similar vessels plying between Jamaica and Cuba during the Spanish war, and with the intention of Mesa to repeat the voyage. The Spanish flag is taken down from the masthead, but merely put in a locker, and with the English flag there was a port flag of Kingston and a Cuban flag. The vessel thus was apparently prepared for challenge from any source. To

recur again to the claim of Cuban sympathy (which surely means to vindicate the Cuban ownership if the English ownership fails), the Cuban flag at the masthead would have been a bold assertion of that allegiance, and no doubt would have been respected by the United States at least, although not a maritime flag recognized among the nations. But such a course was impossible, since the voyage was to a port guarded by Spanish gunboats. And the danger was the chief deterrent, although clearance from the neutral port would probably have been refused to the Cuban flag. In fact, the absurdity of Cuban sympathies on the one hand and of neutral ownership on the other are both apparent when the trade (apart from the mere color of transfer) is kept in view, namely, the carrying of provisions to a beleaguered stronghold of the Spanish forces by or under the direction of Spanish subjects established in trade in another Spanish stronghold, who still retained the Spanish flag with the vessel and whose loyalty appears never to have been seriously doubted, whatever suggestions to the contrary have been thrown into the case.

The law upon the question of such transfers partakes of the strict view which all prize law, dealing with belligerent rights, necessarily imports. Originally, any transfer *flagrante bello* was invalid. The motive of neutral protection being so obvious, the very fact of war tainted the attempt to pass the vessel from the enemy and made it void; but while in more recent times this rule has been somewhat modified, so that the fact of war does not now create a presumption *de jure* against the reality and *bona fides* of such a sale, nevertheless the

presumption, while subject to be rebutted, exists, and the case falls fully within the general doctrine that the allegation of a neutral interest is held to strict and clear proof. It has been fully determined that the *onus probandi* of a neutral interest is on the claimant. (Authorities cited *ante* and *post;* Story's Princ. and Prac., etc., pp. 26, 45, 53.) There can be no doubt that when this respects the neutral claim of property, the rule is fully effective and without exception. Some authorities intimate that where the question is one affecting the regularity of the trade or the *bona fides* of the neutral's operations—as, for instance, with respect to blockade—the prize rule disappears and the ordinary rule, by which a charge of illegality must be established by him who asserts it, takes its place. But that exception, even if it exists, does not affect the case before the Court. And so we contend that the transfer in this case is not established by such facts or in such a way as to avoid the application of the rule in prize law denying validity to transfers from an enemy to a neutral during war. Indeed, the proof would fail to show a valid transfer satisfactorily in an ordinary civil proceeding. It is only necessary to refer to the abstract of the facts stated above in order to see how fully this statement is justified. At the most, the transaction lies in mere assertion without proof, and the assertions themselves are vague and inconsistent and contradictory in more than one important respect, both as to dates and amounts; so that where prize law requires a sale of an enemy vessel to a neutral to be established as actually made for a valid and sufficient consideration and for an innocent purpose, in the sense of a purpose consistent

with good faith, and all this to appear by clear and irrefragable proof, the facts about the sale shown here, in connection with the character and movements of the vessel and the circumstances surrounding the voyage on which she was seized, bring out with irresistible force the failure of the claimant to make good his case.

As to the variations, Mesa says in his deposition *in preparatorio* that Beattie had been in possession of the vessel since the *1st day of June;* that there was a public bill of sale made on the 1st day of June in the presence of witnesses. In his test affidavit he says that on or about the *14th of June*, 1898, the sale was negotiated; while the claimant says that he first became the owner on the *9th of June*. Mesa says that he originally left Manzanillo on the 2d of June and arrived in Kingston on the 4th; while the master, Perez, says that he left on the 4th or 5th and arrived at Kingston about the 7th. And then there were the conflicting statements that the price was $40,000 or £9,000, respectively; that the sum had already been paid; and again, that part of it was credited on an indebtedness. One of the principals declines to say how it was paid, and none of the other witnesses called have any knowledge regarding the fact or circumstances of payment.

Referring now to the authorities—in the case of the *Island Belle* (26 Law Rep., 263), heard in the eastern district of Pennsylvania, there was an attempt similar to the one here to transfer title purely for purposes of protection. The court held:

> The rule of decision in some countries has been that as to a vessel, no change of ownership during

hostilities can be regarded in a prize court. In the United States, as in England, the strictness of this rule is not observed. But no change of property is recognized where the disposition and control of a vessel continued in the former agent of her former hostile proprietors; more especially when, as in this case, he is a person whose relations of residence are hostile.

Decisions of Sir William Scott are authority for this view. In *The Vigilantia* (1 Rob., 1) a ship was taken sailing under Prussian colors, and was claimed by the Crown to belong to the class in which the Dutch attempted to protect their property by pretended transfers to neutral merchants. Similar facts to those in the case at bar appear, suggesting fraud. The former owner continued to conduct the affairs of the vessel as a nominal agent; the former master continued in command; the ship continued in her former trade. "The magistrates of Embden [a neutral Prussian port] have weakened the authority of their certificates by their facility in granting them." The learned judge, referring to the certificates of identity of the Embden magistrates, which appear to have been certificates of the national residence of the master, considers that public interests require that the vigilance of such officials be more laboriously exerted against the impositions which he conceives to have been practiced upon them; because on the other supposition he should be under the necessity of expressing himself with less civility than the relation which he bears to the magistrates of other countries would induce him to do. Regarding the various papers and the conduct of the parties, the court

felt no scruple in pronouncing that the ship still continued *de facto* the property of the former Dutch owner, and was as such subject to condemnation.

> But I will go further, and for the convenience of applying a ruling principle to some other cases which, I am informed, bear a strong affinity to the circumstances of the present case, I will express my opinion on the abstract question of law. I desire to state my opinion, then, subject to the correction of a superior court, that supposing Mr. Brower to be the actual proprietor of this vessel, and resident at Embden, yet this vessel and her concerns * * * are liable to be treated and considered as Dutch property. In the first place, she is * * * a Dutch fishing vessel that went from Amsterdam regularly and habitually to Greenland and returned to Amsterdam, there to deliver her cargo. * * * She is purchased avowedly for pursuing the same course of commerce, the fishing trade of Holland. * * * I am satisfied it was the intention of the parties to carry on this trade to and from Amsterdam. Now, I ask upon what grounds is it that this vessel, so purchased and so employed, is to be considered merely as a Prussian vessel? Here is a ship as thoroughly engaged and incorporated in Dutch commerce as a ship can possibly be. She is fitted out uniformly from Amsterdam; * * * she is fitted out for Dutch importation, in all these respects employing and feeding the industry of that country; she is managed by a Dutch ship's husband, and finding occupation for the commercial knowledge and industry of the subjects of that country; she is commanded by a Dutch captain; she is manned by a Dutch crew, and brings back the produce of her voyage for the purpose of Dutch consumption and Dutch revenue. If to this you

add that the vessel is transferred by the Dutch, because they themselves are unable to carry on the trade avowedly in their own persons, it is truly a Dutch commerce in a very eminent degree, not only in its essence but for the very hostile purpose of rescuing and protecting the Dutch from the naval superiority of their British enemy. In my apprehension, unless it could be maintained as a rule, without any exception whatever, that the domicile of the proprietor constitutes the national character of the vessel, this ship must be condemned even if she had been really transferred.

Now, on that point I conceive the rule to be that where there is nothing particular or special in the conduct of the vessel itself, the national character is determined by the residence of the owner; but there may be circumstances arising from that conduct which will lead to a contrary conclusion. It is a known and established rule with respect to a vessel, that if she is navigating under the pass of a foreign country she is considered as bearing the national character of that nation under whose pass she sails; she makes a part of its navigation, and is in every respect liable to be considered as a vessel of that country. In like manner and upon similar principles, if a vessel purchased in the enemy's country is, by constant and habitual occupation, continually employed in the trade of that country, commencing with the war and evidently on account of the war, on what ground is it to be asserted that vessel is not to be deemed a ship of the country from which she is so navigating, in the same manner as if she evidently belonged to the inhabitants of it? (Pp 11–13.)

Thus the court held that even if the transfer were allowed to be good, the suspicious circumstances surrounding the vessel and her trade were valid ground of

condemnation, and on the transfer the view of the court was that it was merely ostensible and not real (p. 8):

> On the other side, suppose that there is a war, or the apprehension of a war, when the documents are composed. Here, in that decided or in that doubtful state of things, they become subject to some suspicions *in limine*, which suspicion may be increased by their having passed through the enemy's hands. The suspicions will be still further increased if the property to which they relate has continued under the management and direction of the enemy. And if, in addition to all this, they carry such contradictions or difficulties on the face of them as can not be explained, admitting the matter to be a fair transaction, all or any of these circumstances must divest the papers of their natural credit. Let us see, then, how the papers in the present case will bear this test. They are papers composed during a war, on the very spur of the occasion. They purport that a ship belonging to the enemy was at that time transferred, but it appears that the management of her concerns still continued in the hands of the former owner; * * * the Dutch master continued in command and the crew were picked up in the harbor of the enemy. In a word, there is no circumstance in the whole history of this vessel which connects her with any neutral ownership, excepting the single averment contained in them that there had been a transfer.

In that case, it is true, there was the additional element of purchase in the enemy's country. In the case at bar it was very easy to avoid that, and it was avoided. Beattie and Mesa both left Manzanillo for Kingston on June 2, Beattie on one of his own steamers and Mesa by the *Benito Estenger*.

See also *The Endraught* (1 Rob., 22, 25), in which, among other grounds of condemnation depending on the real national ownership, the court refers to a bill of sale appearing in the case which "is entirely unsupported and is only a part of the machinery of the drama."

In *The Jemmy* (4 Rob., 31), Sir William Scott says:

> This case has been admitted to further proof, owing entirely to the suppression of a circumstance which if the court had known it would not have permitted further proof to have been introduced, namely, that the ship has been left in the trade, and under the management of the former owner. Wherever that fact appears the court will hold it to be conclusive, because, from the *evidentia rei*, the strongest presumption necessarily arises that it is merely a covered and pretended transfer. The presumption is so strong that scarcely any proof can avail against it. It is a rule which the court finds itself under the absolute necessity of maintaining. If the enemy could be permitted to make a transfer of the ship and yet retain the management of it as a neutral vessel it would be impossible for the court to protect itself against frauds.

In that case "the inadequacy of the price and the chasms appearing in the correspondence are circumstances inconsistent with the probability of ownership;" so here, the variation regarding the date of sale and the price, and the failure to show how it was paid are likewise circumstances inconsistent with ownership. And the case of *The Jemmy* shows not only that the transfer of the *Benito Estenger* was invalid, but also—since Mesa's control and management of the vessel as supercargo appeared

upon the original testimony—that further proof was not properly allowed to the claimant.

In *The Omnibus* (6 Rob., 71), where the vessel was admitted to have been a British ship transferred at the beginning of the war to the father of the then master, who was also the former master, and asserted to have been again sold by him to the claimant, although she continued under the management of the former master and in the same course of trade, the language of the decision is as follows:

> The court has often had occasion to observe that where a ship, asserted to have been transferred, is continued under the former agency and in the former habits of trade, not all the swearing in the world will convince it that it is a genuine transaction.

In the case of *The Flora* (6 Rob., 360), the ship had been a Prussian vessel, transferred to an asserted Portuguese proprietor subsequent to Prussian hostilities, it appearing on further proof that she had been originally a Dutch vessel and transferred to Prussian ownership on the commencement of Dutch hostilities, continuing in the Prussian employment for some time, and then when lying at Lisbon, transferred to the asserted Portuguese proprietor under circumstances which appear to the court to falsify the whole transaction, and therefore the claim for ship and cargo was rejected, the transfer being considered wanting in *bona fides*. A note to this case shows the hesitation with which the transition was made from the earlier rule of declining to allow any transfer *flagrante bello*. It appears that in cases arising in 1806 the King's advocate intimated that although restitution had some-

times been made where an enemy's vessel had been transferred subsequent to hostilities, yet as the practice of such transfers was growing more prevalent and was liable to abuse, he would consider himself at liberty to argue the point in future cases, even where a treaty privilege might be involved; and in a case arising later the court declared in reply to an argument that this concession from the stricter rule had already been settled, that it did not consider the question to have been decided, being one of great importance and fit to be reserved for grave consideration.

In *The Caroline* (Spinks's Prize Cases, 252), Dr. Lushington restored a Prussian vessel which had assumed and carried Russian colors until the month of February, 1854, when the Crimean war was imminent, and then had adopted the Prussian flag. But while this was a circumstance of very considerable suspicion he was convinced that the property was proved to be Prussian, both on the documents which the vessel carried and because there was no doubt that she was originally Prussian and had assumed the Russian colors years before, during the war between Denmark and Prussia, and had merely continued to carry the Russian colors for three years after that war ceased, which, while it might have been a fraud upon other nations, was not under the circumstances in violation of British law. In other words, the real Prussian ownership and the original and resumed Prussian nationality fully appeared and was substantiated as existing *bona fide*.

In the *Otto and Olaf* (Spinks, 257, 262), where there was sale from Russian owners to Danish owners very

shortly after the Crimean war, the remark is made that the court "looks with great jealousy upon the sale of a vessel to a neutral subject at the commencement of the war," and it was held that that fact was a ground for further proof, which was thereupon ordered as to two alleged transfers of the vessel. The judgment in the *Soglasie* (id., 104, *et infra*) is referred to and distinguished with the conclusion that where an enemy vessel has been purchased by a neutral and continued in a lawful trade for a considerable length of time, a presumption arises in favor of the neutral which would not exist provided it had been the first voyage. Of course, that limited concession would not have been granted where the vessel, as here, was not engaged in lawful trade. The further proofs in the case of the *Otto and Olaf* related to the *bona fides* of the documents, including both the bill of sale and a certain certificate of ownership, and upon such further proof the validity of the transfer appears to have been established because the vessel was ultimately restored upon payment of the captors' expenses. (Note *b*, p. 263.)

Numerous other decisions of Dr. Lushington rest upon the same principles and upon facts like those involved in the case at bar. In *The Rapid* (Spinks' Prize Cases, 80) and in *The Christine* (id., 82) the transfers were to the master, and this was an additional, but not the only, reason why they were held not to be valid. The special objection to a transfer to a master seems to rest on the fact that his assertion of neutral citizenship is much less likely than in the case of one who bore no previous relation to the vessel. But the emphasis is equally laid by the judgment of the court upon the continuance of the

ship in the same trade and upon the failure to prove the actual payment of the consideration.

In *The Ernst Merck*, (id., 98), the sale was not to the master, but to neutrals of Mecklenburg, and the sale was shortly before the war. The decision is that the *onus* of giving complete and satisfactory proof of the sale lies on the claimant, and without it the court can not restore, even if it is not called upon to pronounce affirmatively that the transfer was fictitious or fraudulent. The language of the court is as follows (p. 100):

> This, being a sale by a merchant—now become an enemy—very shortly before the war, is a transaction requiring to be very narrowly investigated, and respecting which the court must exercise great vigilance lest the property of the enemy should be sheltered under a fictitious sale. A real *bona fide* sale is, no doubt, within the bounds of lawful commerce—of commerce lawful to the neutral; but if a neutral merchant chooses to engage for the purpose of extraordinary profit in dangerous speculations of this kind he must be bound to satisfy the court of the fairness of the transaction by the clearest evidence, complete in all legal form, and not only in legal form, but in truth and reality. If he does not produce such proof, or produces it in part only, when the *res gestæ* show that better proof might have been adduced, he must not expect restitution upon such incomplete evidence.

After pointing out certain discrepancies and deficiencies as to the evidence of the transfer, the learned judge continues:

> I now come to the payment. We all know that one of the most important matters to be established by a claimant is undoubted proof of payment.

And because of the absence of this proof, and because of the lack of clear evidence as to the transfer, which apparently might have been given, as well as upon other grounds, the vessel was condemned.

The facts in the case of *The Soglasie* (id., 104) differ widely from the present facts, because the vessel sailed from a Russian port with a cargo bound for a Scotch port, and was there seized by the customs officers. The claim was that she had been sold at Messina, Sicily, by the master, a neutral, shortly before the Crimean war, under a power of attorney from the enemy owner to a Danish merchant residing and trading in Sicily, upon which she assumed the Danish flag; that during the war the vessel was sold to him (the master) at Copenhagen under another power of attorney from the Danish owner. But, while, as will thus be perceived, the application of the principles is to very different facts, the language of the court covers the present case and may also aptly be applied thereto.

> I need hardly repeat what I have stated in previous cases—that the court can only restore when the affirmative proof is satisfactory; * * * the *onus probandi* must lie upon the claimant, who has to establish the affirmative. * * * I almost repeat the very words of Lord Stowell when I say that the court never inquires whether an individual is perjured or a document forged; the inquiry is, whether it is satisfied by the whole evidence. With regard to documents of a formal nature, though when well authenticated they are to be duly appreciated, it does not follow that they are always of the greatest weight, because we know, without attributing blame to the authorities under which they issue, they are

> instruments often procured with extraordinary facility. What the court especially desires is that testimony which bears less the appearance of formality—evidence natural to the transaction, but which often carries with it a proof of its own genuineness; the court looks for that correspondence and other evidence which naturally attends a transaction, accompanies it, or follows it, and which, when it bears upon the face of it the aspect of sincerity, will always receive its due weight. But, on the other hand, when such means of information, which might naturally be expected, are wanting, and further proof has been allowed, the court is led to suppose that that which is almost indispensable to a just case either does not exist, or if produced would be detrimental to the cause of the producent (pp. 105, 106-7).

The court points out the lack of proof of payment of the purchase price, either of the sale at Messina or of the second one at Copenhagen. The sale was also attacked by the captors because it was made *in transitu*, and that element, we contend, really exists here, because it does not strain the facts to urge that the real voyage of the *Benito Estenger* was from Manzanillo (whence she sailed June 2) back to Manzanillo. But the decision also rested on the fact that the sale was *flagrante bello*, and the authority of Sir William Scott is cited as denouncing such a transaction as illegal. The learned judge continues (p. 110):

> I am of opinion that the claimant has wholly failed to substantiate his claim by reasonable proof, and that such proof as has been produced is utterly inadequate to satisfy that demand which the practice of the court and the rules sanctioned so repeatedly by Lord Stowell justly require. I found my judgment

> in this case mainly upon the entire absence of the proof natural to this transaction; upon the absence of any letter from Mr. Saraow, from Mr. Jeff, and from Messrs. Broberg, and of any affidavit from these gentlemen; and on there not being a single atom of proof that Mr. Jeff was paid for the ship which was purported to be sold. I consider it my duty to condemn this vessel, adding, however, that even had the proof of ownership been more stringent, I am not satisfied that I could have restored the property to the master as entitled to a Danish character. No evidence having been given with respect to the cargo, that likewise must be condemned.

Just as in this case, notwithstanding the neutral claim, the real ownership comes forward in Mesa's assertion of his Cuban sympathies, so in the case of the *Soglasie*, a claim was made in argument that even if the vessel was Russian, it should be protected under the Order in Council. The reply of the court covers the equivalent suggestion in the present case (p. 110–11):

> Then I do distinctly say, if a man chooses to clothe himself fictitiously with a Danish character, and attempts to get restitution under that pretense, and the court detects the falsehood from all the evidence of the character which he pretends to assume, I think it is not very consistent with law or justice that he should then be entitled to turn round and say, "I played the rogue—I tried to persuade you I was a Dane, but I am in reality a Russian; give me the benefit of that Order in Council which I should have been entitled to if I had acted as an honest man."

See also *The Johann Christoph* (id., 60), upon such claim of exemption under the Order in Council.

In *The Baltica* (id., p. 264), several vessels were sold by an enemy father to a son who was a neutral, immediately before the war, which were only paid for in part, and they were condemned on the ground of continuance in the enemy's interest. Such transactions were held to amount to a fraud against belligerent rights, whether done in contemplation of war or *flagrante bello*. That case also decided that a neutral residing in an enemy's country, and trading there as a merchant, must be regarded as an enemy. The same circumstance in this case should have its due weight. Notwithstanding the technical nationality as British, the claimant had been for a long time a trader established in the territory of the enemy. His foreign domicile in Cuba, notwithstanding the allegations as to the domicile of his parents in England and his successive visits there, fully appears from the admitted facts of his interests and occupation in Cuba. We shall revert to this point below.

The conclusions from the foregoing and other authorities seem to be as follows: That the transfer of a vessel, not shown with entire clearness as *bona fide*, especially where the payment of the purchase price does not positively appear, is void whether made *imminente bello* or *flagrante bello*. The feature of a transfer *in transitu* adds to the suspicions against the vessel, and a transfer to the master, the vessel continuing in the same course of trade, is especially suspicious, the object in all such cases being the same, namely, to elude a belligerent right *animo fraudandi*. (*The Jan Frederick*, 5 Rob., 132.) It may well be argued in this case that the pretended sale was really effected *in transitu*, because the *Benito Estenger*,

proceeding from Manzanillo originally, merely passed over to Kingston in order to obtain the protection of a transfer and to take on there the return cargo for Manzanillo, which was, as a matter of fact when the vessel set out, its real and ultimate destination, whereby she continued substantially in the same course of trade in which she had been engaged previously. And while the case of transfer to a master, especially were there is grave doubt about his asserted neutral citizenship, is particularly suspicious, for the obvious reason that he had just previously been engaged in the commercial service of the enemy and on an enemy vessel, yet the same suspicion and for similar reasons applies to the case of the claimant here. In other words, the claimant may be a neutral, but in view of his relations and actions, his neutrality may not avail him to save his property any more than the doubtful neutrality of the master in the cases of transfer to the latter.

The claimant's subject relation to England is asserted, because, when he was born in the enemy territory at Santiago, his father was serving as British vice-consul there. Nevertheless he had been established in business in the enemy territory for years; he was clearly resident or domiciled there, whatever the claim of continuing connection with England; and the general rule is clear that under such circumstances his property is to be regarded as enemy property and as condemnable as prize. For the purpose of capture, property found in enemy's territory is enemy's property without regard to the status of the owner. (*Lamar, ex'r*, v. *Browne*, 92 U. S., 187;

*The Friendschaft*, 4 Wheat., 105; *The Cheshire*, 3 Wall., 231; *The William Bagaley*, 5 Wall., 377; *United States* v. *Farragut*, 22 Wall., 406.) This is true, even if the property be owned by a loyal citizen of the country of the captors. The liability of the property is irrespective of the *status domicilii*, guilt or innocence of the owner (*The Grey Jacket*, 5 Wall., 342); the only qualification of the rule being where upon the breaking out of hostilities, or as soon after as possible, the owner escapes with his property. The commercial domicile of a merchant at the time of capture of his goods determines their character as hostile or neutral. (*The Venus*, 8 Cranch, 253; *The Frances*, id., 363.) And as to partnership relations, the determinations are that the property of a commercial house established in the enemy's country is subject to seizure and condemnation as prize without regard to the domicile of the partners, even though a member of the firm resides elsewhere. While the claim here is on Mr. Beattie's individual behalf, his own residence in fact and the indication as to his brother's residence, both of them evidently being engaged in the management of the Cuban estates, make it appropriate to cite the principle ruled in the *Bagaley* case, *supra*, namely, that a firm doing business in the enemy's territory, where the active member of the firm resided, must be ruled by his status in reference to the property of the firm under his control in the enemy's country. (*The Cheshire*; *The Friendschaft*; Prize Cases, 2 Bl., *supra*; *The Antonio Johanna*, 1 Wheat., 159.)

National character depends on domicile, and the character of a ship is determined by the residence of her

owners and not by the flag she carries. (*The Ann Green*, 1 Gall., 274; *United States* v. *El Telegrafo*, Fed. Cas., 15049; *The San Jose Indiano*, 2 Gall., 268.) There are numerous authorities; see Digest Federal Cases, pp. 2379 et seq.

The rule as to merchandise appears to be that goods consigned to a neutral trader or house of trade established in the enemy territory, or goods belonging to such owners shipped out of the enemy territory in the course of trade, and not in process of withdrawal because of the war, within a reasonable time, are good prize, because of the commercial *locus* of the owners; and that if the goods are the produce of an estate situated in the hostile territory, they are so impressed with the character of the soil that, although the owner of the estate be resident in a neutral country, his interest in the produce is deemed enemy property. (Story Prin. & Pr. of Prize Courts, pp. 60, 62, 63, 70, and cas. cit.; *30 Hogsheads of Sugar* v. *Boyle*, 9 Cr., 191; *The Lilla*, 2 Spr., 177; *The Mary Clinton*, Blatchf. Pr. Cas., 556; *The San Jose Indiano*, 2 Gall., 268; *The Francis*, 1 Gall., 618; *The Evening Star*, Blatchf. Pr. Cas., 582.)

Thus the claimant's case, like the master's in the English cases referred to, is vitiated by the fact that he has been for years a part of the commercial resources and operations of the Spanish territory, has been engaged in trade there, and has thus become, with reference to prize law, subject to the condemnation of his property as *quasi*-enemy property, whether it is his own individual possession or is embraced in the possessions of his firm. And

if it is said that the cases in which these doctrines were established concerned merchandise and cargoes which were the produce of the neutral's business in the enemy's territory, or were found there or consigned to him there, and not to his vessels captured on the high seas, the fact is especially to be noted in this case that the capture was effected within the enemy's territorial waters. "The ship was captured in front of Cape Cruz." (Record, pp. 13, 16.) "The ship was about *a mile and a half* northwest of Cape Cruz light-house at the time of her capture" (p. 10). So that, granting for argument the asserted transfer, here is a case of property of a neutral, who was domiciled and established in business for years in the enemy's territory, captured in that territory, and this brings it squarely within the decisions on the subject as cited, and there is no exception therefrom which is applicable. These rules were established in cases in which the trade was shown to be innocent, or was presumably innocent, and yet the property was condemned. Here, as we insist, the trade was not legitimate; it was trade with the enemy, concealed in its real nature, ostensibly innocent and carried on by a neutral, but really conducted by the Spanish owner of the Spanish vessel with the acquiescence and participation of the neutral transferee. It was "illicit intercourse with the enemy." Thus, on all grounds, when the real character of the business and nature of the sale are examined, it is seen that the condemnation of the ship is entirely consistent with justice and equity.

The United States authorities on the question of transfer, with which the nature of the trade pursued by the vessel is often closely associated, are as follows:

In *The Rugen* (1 Wheat., 62) it was held that whatever may be the regularity and effect of the neutral muniments of the ship, yet if the court shall be of opinion that they were only colorable, they will not serve to elude belligerent rights. "So far from such documents, when intended only as a cover, affording any protection to property, they render the party resorting to them doubly criminal by the scene of fraud and perjury, which must be waded through in order to obtain them; and then in case of disaster to make a court believe that such papers disclose nothing but the real truth of the case" (p. 67).

Change of ownership during hostilities is not recognized where the disposition and control of the vessel continue in the former agent of hostile proprietors. Enemy property transferred to a neutral residing at the time in enemy country (it is to be observed that Mr. Beattie did not go to Jamaica until early in June, 1898) does not change its character as enemy property. Transfer of property to a neutral by an enemy in time of war is illegal as in violation and fraud of vested belligerent rights. (*The Island Belle*, 26 Law Rep., 263; *The Mersey*, Blatchf. Pr. Cas., 187; *The Stephen Hart*, id., 387.) In the latter case it was held that the mere registry of the vessel in the name of the neutral claimant as owner is not enough, and that competent proof of the transfer must be produced or the vessel will be regarded as enemy

property. And in the case of *United States* v. *The Lilla* (2 Cliff., 169), the decision was that the purchase of an enemy vessel in a neutral port is itself a suspicious circumstance, so that the evidence of an absolute *bona fide* transfer must be clearly established.

Justice Story's views upon the questions involved in the case are as follows:

> The questions which are most ordinarily discussed in prize courts at the hearing of the cause respect the national character of the property; and this depends sometimes upon the habits and trade of the ship, upon the nature of the voyage or of the cargo, or upon the legal or illegal conduct of the parties themselves; but ordinarily depends upon the national domicile of the asserted proprietor or upon the nature of the title which he asserts over the property. In all these cases where the property is condemned it is by fiction, or rather by intendment of law, deemed the property of enemies, that is, of persons who are so to be considered in the particular transaction, and is condemned *eo nomine*. * * * In respect to the question who are to be considered enemies or not, the general principle is that every person is to be considered as belonging to that country where he has his domicile, whatever may be his native or adopted country. * * * And even if a person goes into a belligerent country originally for temporary purposes, he will not preserve his neutral character if he remain there several years, paying taxes, etc.

In order that the native character may revert, it is necessary that the neutral so resident or domiciled shall put "himself *in itinere* to return to his native country *animo revertendi*." (Story's Notes on the Principles and

Practice of Prize Courts, pp. 58–60.) Even if the person is not resident in the enemy's country, but is a partner in a house of trade there, his goods are liable to condemnation, "for the domicile of the house is considered in this respect as the domicile of the partners." "It is a settled principle that traffic alone, independent of residence, will in some cases confer a hostile character on the individual;" and while in general the national character of ships depends on the residence of the owner, and the flag and pass are conclusive, this is not so, even if purchased by a neutral, if the vessel is engaged in the trade of the enemy's country. The solemn declarations of character and ownership may be shown to be "spurious credentials assumed for the purpose of disguising the real character of the vessel; and it is no inconsiderable part of the ordinary occupation of a prize court to pull off this mask and exhibit the vessel so disguised in her true character of an enemy's vessel." (Id., pp. 60–2.)

> In respect to the transfers of enemy's ships during war, it is certain that purchases of them by neutrals is not in general illegal; but such purchases are liable to great suspicion; and if good proof be not given of their validity by a bill of sale and payment of a reasonable consideration, it will materially impair the validity of the neutral claim; * * * and if after such transfer the ship be employed habitually in the enemy's trade, or under the management of a hostile proprietor, the sale will be deemed merely colorable and collusive. * * * Anything tending to continue the interest of the enemy in the ship vitiates a contract of this description altogether (p. 63). (Citing *The Bernon*, 1

Rob., 102; *The Sechs Geschwistern*, 4 Rob., 100; *The Jenny*, id., 31; *The Omnibus*, 6 Rob., 71; and other cases on previous pages.)

Referring to proprietory interests in cargoes and to transfers *in transitu* and the rule that national character may not be changed during a voyage undertaken when hostilities exist or are imminent, which rule Justice Story says equally applies to ships and cargoes, he remarks (pp. 64–5):

> And property is still considered *in transitu if it be ultimately destined to the hostile country, notwithstanding it has arrived at a neutral port* and the ship is there changed. The reason why courts of admiralty have established this rule as to transfers *in transitu* during a state of war or expected war is asserted to be that if such rule did not exist, all goods shipped in the enemy's country would be protected by transfers which it would be impossible to detect.

The rule applying equally to ships covers this case, where the ship was not changed for transshipment of cargo, but was changed in ownership for the same illegal purpose.

Dr. Lushington, in the case of the *Soglasie*, referred to before (Spinks Prize Cases, 104, et seq.), appears to think that while generally in prize law the *onus probandi* rests on the claimant, who has to establish the affirmative, in cases of transfer there can not be said to be any presumption on either side; that the court ought to commence its investigation with perfect impartiality and all relevant circumstances must be duly weighed; and that from those circumstances undoubtedly a presumption

may arise in favor of or against any *particular* claimant. "Weighing all these circumstances, the court relies on no conclusion from the fact of the power of attorney to the master; indeed, I ought rather to say that in almost all these cases it is not from an isolated fact but from a view of all the circumstances taken together that the court can form its judgments."

Now it seems to us that Dr. Lushington shows in this case and by such language that, while the effort should be to arrive at the truth from all the circumstances, there is of necessity in certain prize cases, and especially in cases of alleged sale, a suspicion *in limine*, because of which the *onus probandi* to show the affirmative rests with particular force in such cases upon the claimant. Else why should not a power of sale or a bill of sale make a *prima facie* case in favor of the claimant? Plainly it does not, and has not customarily in the cases in which such documents appear. (Cf. Lord Stowell's "suspicions *in limine*" in the case of the *Vigilantia, 1 Rob., 1, 8.*) But however the rule may be in this respect, we contend that the most scrupulous weighing of all the facts and examination of the real nature of the case for the sole purpose of arriving at a conclusion consistent with impartial justice will fail "to satisfy the court of the fairness of the transaction by the clearest evidence complete in all legal form, and not only in legal form, but in truth and reality." (*The Ernst Merck*, Spinks Prize Cases, 101.) While it is the duty of the courts to protect the just rights of neutrals and the proper exercise of municipal powers by independent States within their

own dominions, when the officials thereof have not been evidently deceived by false representations as to a vessel, or have not granted papers knowing that they were granted upon false grounds, nevertheless "it is also the court's bounden duty to take care that [such powers and alleged rights] do not operate as an infringement on the just rights of belligerents." (*Ibid.*, p. 103).

It is always to be borne in mind that there is a very strong indication in the record of Mr. Mesa's continuing interest in the vessel. He, as well as the master, made a test affidavit and claim on behalf of Mr. Beattie. Why should he have done so if the sale terminated his interest in the vessel? It was very obvious that any doubt of Mr. Beattie's sole interest was a dangerous suggestion to enter upon the record, because one of the requirements in prize law is that the ownership claim should be a sole one, or that the neutral interest, if claimed by more than one party, should be entire; that is, should cover all of the property; that there should not be any outstanding interest or claim which was not clear. Nevertheless, the risk of suggesting that defect was taken, and Mr. Mesa made a claim ostensibly on Mr. Beattie's behalf. But we say that it is a fair inference from all the circumstances, and a proper argument to make, as we do, that this means that Mr. Mesa is still interested, and that in his anxiety to protect his interest, he proffered to the nominal claimant's use an additional test affidavit and claim which, if the neutral ownership were genuine, was unnecessary surplusage.

If the claim is false, that is a cause of condemnation in itself, because it was determined in *The Amiable Isabella* (6 Wheat., 1) that the assertion of a false claim in whole or in part by an agent or in connivance with the real owner is a substantive cause of condemnation.

Thus, on all the circumstances presented in this case, and the principles invoked and applicable to them—the illicit trade with the constituted authorities of the enemy; the Spanish nationality of the vessel and of her real owner, who continued to direct her movements under the allowance and appointment of the pretended transferee; the illusory character of the Cuban adherence, in view of the record facts and the well-established rules regarding residence and trade in enemy's territory; the absurdity of the claim of service to the United States or of agreement with the United States consul which would confer protection upon the vessel; and, finally, the lack of reality or *bona fides* in the asserted sale and transfer, made *flagrante bello*, not measuring up to the requirements of the decisions in prize, although these are less strict than the ancient rule, which listened to no transfer *flagrante bello*—all combine to justify, and, as we contend, to require the affirmation by this Court of the decree of condemnation of the *Benito Estenger* in the prize court below.

HENRY M. HOYT,
*Assistant Attorney-General.*

JOS. K. MCCAMMON,
JAMES H. HAYDEN,
*Of Counsel for Captors.*

No. 192.

IN THE

# Supreme Court of the United States

## OCTOBER TERM, 1899.

*No. 192. Prize.*

THE STEAMSHIP BENITO ESTENGER

*vs.*

THE UNITED STATES.

**Further Stipulation as to the Term "Patente" in Certain Spanish Documents.**

Referring to pages 2 and 3 of the Spanish documents and translation added to the record herein by stipulation dated January 22, 1900, it is further agreed—

That the Spanish word "patente" is sometimes used in commercial and maritime parlance for a marine paint for ships' bottoms, and it is stated by Mr. Messa that it was so used in these cablegrams.

This stipulation may be submitted to the justices of this court as soon as printed by the clerk.

Dated February 10, 1900.

HENRY M. HOYT,
*Assistant Attorney General, for the United States.*
JAMES H. HAYDEN,
*Of Counsel for Captors.*
HARRINGTON PUTNAM,
*Advocate for Claimant.*

[Endorsed:] File No., 17,268. Supreme Court U. S., October term, 1899. Term No., 192. The Steamship Benito Estenger, &c., *vs.* The United States. Stipulation as to certain Spanish documents. Filed February 12, 1900.

MR. JUSTICE PECKHAM dissented.

## THE BENITO ESTENGER.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF FLORIDA.

No. 192. Argued January 11, 12, 1900. — Decided March 5, 1900.

The general rule is that in time of war the citizens or subjects of the belligerents are enemies to each other without regard to individual sentiments or dispositions, and that political status determines the question of enemy ownership.

By the law of prize, property engaged in any illegal intercourse with the enemy is deemed enemy property, whether belonging to an ally or a citizen, as the illegal traffic stamps it with the hostile character and attaches to it all the penal consequences.

Provisions are not, in general, deemed contraband; but they may become so if destined for the army or navy of the enemy, or his ports of naval or military equipment.

In dealing with a vessel asserted to be an enemy vessel, the fact of trade with the enemy in supplies necessary for the enemy's forces is of decisive importance.

Statement of the Case.

Individual acts of friendship cannot change political status where there is no open adherence to the opposite cause and former allegiance remains apparently unchanged.

A consul has no authority by reason of his official station to grant exemption from capture to an enemy vessel; and this vessel was not entitled to protection by reason of any engagement with the United States.

In cases of peculiar hardship, or calling for liberal treatment, it is not for the courts, but for another department of the Government, to extend such amelioration as the particular instance may demand.

Transfers of vessels *flagrante bello* cannot be sustained if subjected to any condition by which the vendor retains an interest in the vessel or its profits, a control over it, or a right to its restoration at the close of the war.

The burden of proof in respect of the validity of such transfers is on the claimant, and the court holds as to the transfer in this case that the requirements of the law of prize were not satisfied by the proofs.

The Benito Estenger was captured by the U. S. S. Hornet on June 27, 1898, off Cape Cruz on the south side of the island of Cuba, and was brought into the port of Key West and duly libelled on July 2. The depositions *in preparatorio* of Badamero Perez, Edwin Cole and Enrique de Messa were taken, and thereafter and on July 27 a claim was interposed by Perez as master of the steamer on behalf of Arthur Elliott Beattie, a British subject, as owner, supported by test affidavits of himself and de Messa. The cause was preliminarily heard on the libel, the depositions *in preparatorio* and the test affidavits, and sixty days given for further proofs. Accordingly the depositions of the claimant and sundry others were taken on behalf of the claimant, and the testimony of the consul of the United States at Kingston on behalf of the captor. The cause coming on for final hearing, the court entered a decree December 7, 1898, condemning the vessel as lawful prize as enemy property, and ordering her to be sold in accordance with law. Claimant thereupon appealed, and assigned errors to the effect in substance that the court erred in failing to hold that the Benito Estenger was a British merchant ship, duly documented and entitled to the protection of the British flag, and lawfully owned and registered by a subject domiciled in Great Britain; and also in holding that the Benito Estenger was lawful prize of war, inasmuch as she was engaged on a voyage in

Counsel for Parties.

behalf of the local Cuban junta in Kingston, allies of the United States, and when captured was in the service of the United States, and employed in friendly offices to the forces of the United States. The vessel prior to June 9, 1898, was the property of Enrique de Messa, of the firm of Gallego, de Messa and Company, subjects of Spain and residents of Cuba. On that day a bill of sale was made by de Messa to the claimant, Beattie, a British subject, and, on compliance with the requirements of the British law governing registration, was registered as a British vessel in the port of Kingston, Jamaica. The vessel had been engaged in trading with the island of Cuba, and more particularly between Kingston and Montego, Jamaica, and Manzanillo, Cuba. She left Kingston on the 23d of June, and proceeded with a cargo of flour, rice, cornmeal and coffee to Manzanillo, where the cargo was discharged. She cleared from Manzanillo at 2 o'clock A.M., June 27, for Montego, and then for Kingston, and was captured at half-past five of that day off Cape Cruz. The principal question was as to the ownership of the vessel and the legality of the alleged transfer, but other collateral questions were raised in respect of the alleged Cuban sympathies of de Messa; service on behalf of the Cuban insurgents in the United States; and the relation of the United States consul to the transactions which preceded the seizure. It was argued that the vessels of Cuban insurgents and other adherents could not be deemed property of the enemies of the United States; that this capture could not be sustained on the ground that the vessel was such property; that the conduct of de Messa in his sale to Beattie was lawful, justifiable, and the only means of protecting the vessel as neutral property from Spanish seizure; and finally, that this court could and should do justice by ordering restitution, under all the circumstances of the case.

*Mr. Harrington Putnam* for claimant.

*Mr. Assistant Attorney General Hoyt* for the United States. *Mr. Joseph K. McCammon* and *Mr. James H. Hayden*, counsel for captors, were on his brief.

Opinion of the Court.

*Mr. George A. King* and *Mr. William B. King* filed a brief on behalf of captors.

Mr. Chief Justice Fuller, after stating the case, delivered the opinion of the court.

If the alleged transfer was colorable merely, and Messa was the owner of the vessel at the time of capture, did the District Court err in condemning the Benito Estenger as lawful prize as enemy property?

"Enemy property" is a technical phrase peculiar to prize courts, and depends upon principles of public policy as distinguished from the common law. The general rule is that in war the citizens or subjects of the belligerents are enemies to each other without regard to individual sentiments or dispositions, and that political status determines the question of enemy ownership. And by the law of prize, property engaged in any illegal intercourse with the enemy is deemed enemy property, whether belonging to an ally or a citizen, as the illegal traffic stamps it with the hostile character and attaches to it all the penal consequences. *Prize cases*, 2 Black, 635, 674; *The Sally*, 8 Cranch, 382, 384; *Jecker* v. *Montgomery*, 18 How. 110; *The Peterhoff*, 5 Wall. 28; *The Flying Scud*, 6 Wall. 263.

Messa was a Spanish subject, residing at Santiago, and for years engaged in business there. His vessel had a Spanish crew and Spanish officers, and he testified that he was on board of her as supercargo. She had the Spanish flag in her lockers, though she was flying the British flag at the moment, under a transfer, which, as presently to be seen, was colorable and invalid. There was evidence tending to show that Messa sympathized with the Cuban insurgents, but no proof that he was himself a Cuban rebel or that he had renounced his allegiance to Spain. The vessel carried to Manzanillo on this voyage a cargo of provisions, consisting principally of eleven hundred barrels of flour.

Manzanillo was a city of several thousand inhabitants and the first important place on the south Cuban coast between

Santiago and Cienfuegos, lying inside the bay formed by the promontory which Cape Cruz terminates, and about sixty miles northeast of the cape. Cape Cruz is about due north from Montego Bay on the northwestern shore of Jamaica, and about seventy-five miles distant, while Kingston is on the southeastern coast of Jamaica. The record lacks evidence of the condition of affairs there at that time, but official reports leave no doubt that it was defended by several vessels of war and by shore batteries, and was occupied by some thousands of Spanish soldiers. On the 6th of April, 1898, the Secretary of the Navy had instructed Admiral Sampson, among other things, that the Department desired, "That in case of war, you will maintain a strict blockade of Cuba, particularly the ports of Havana, Matanzas, and, if possible, Santiago de Cuba, Manzanillo and Cienfuegos." Manzanillo was the terminus of a cable which connected with Santa Cruz, Trinidad, Cienfuegos and Havana, and was subsequently cut by the forces of the United States, in order to check the inland traffic with Manzanillo and to prevent the calling of reënforcements to resist the capture of that place. And it appeared that Admiral Sampson had been for some weeks endeavoring to stop blockade running on the south coast of Cuba, and that a large vessel with a heavy battery was stationed at Cape Cruz. Manzanillo was not declared blockaded, however, until the proclamation of June 27, 1898; but the consul of the United States at Kingston had warned Messa and Beattie that a blockade in fact existed. The claimant testified that the vessel was chartered by Flouriache, a Cuban merchant, and that the cargo was consigned to Bauriedel and Company, at Manzanillo. The deposition of neither of these was taken. According to the explicit testimony of the consul, he was informed by both the claimant and his brother that the flour was transferred by Bauriedel and Company, through a communicating way from their warehouse to the Spanish government warehouse, immediately upon its delivery; and no evidence to contradict this was introduced.

The instructions of the Navy Department to "Blockading Vessels and Cruisers," in the late war, included among articles

conditionally contraband, "Provisions, when destined for an enemy's ship or ships, or for a place that is besieged."

In *The Commercen*, 1 Wheat. 382, 388, Mr. Justice Story said: "By the modern law of nations provisions are not, in general, deemed contraband; but they may become so, although the property of a neutral, on account of the particular situation of the war, or on account of their destination. . . . If destined for the ordinary use of life in the enemy's country, they are not, in general, contraband; but it is otherwise if destined for military use. Hence, if destined for the army or navy of the enemy, or for his ports of naval or military equipment, they are deemed contraband."

In *The Jonge Margaretha*, 1 C. Rob. 189, 193, Sir William Scott discussed this question, and, after referring to many instances, concluded: "And I take the modern established rule to be this, that generally they are not contraband, but may become so under circumstances arising out of the particular situation of the war, or the condition of the parties engaged in it."

But while alluding to this subject by way of illustration we do not feel called on to consider under what particular circumstances, generally speaking, provisions may be held contraband of war. It is enough that in dealing with a vessel adjudicated to have been an enemy vessel, the fact of trade with the enemy, especially in supplies necessary for the enemy's forces, is of well nigh decisive importance.

In reply it is suggested that this cargo was intended for the Cuban insurgents, and a quotation is made from a letter of the consul to the effect that he had been "told privately by the president of the local junta, who has performed valuable services for me, that the proceeds of this cargo are to be forwarded to the Cuban government and troops through the Cuban agent at Manzanillo." The suggestion derives no support from the record, and the facts remain that the provisions were delivered to the Spanish government, and that the trade to this Spanish stronghold constituted, under the laws of war, illicit intercourse with the enemy.

This brings us to consider the contention that Messa had

rendered important services to the United States; that he was the friend and not the enemy of this Government, and that there was an agreement between him and the United States consul which operated to protect the vessel from capture. But Messa's status was that of an enemy, as already stated, and this must be held to be so notwithstanding individual acts of friendship, certainly since there was no open adherence to the Cuban cause, and allegiance could have been shifted with the accidents of war. The legal conclusion was not affected by the fact that Messa had, in cultivating friendly relations with the consul, given the latter an old Government plan of the province of Santiago and an especially prepared chart of the harbor. Thus displaying his amicable inclinations, he endeavored to obtain from the consul a letter of protection for the voyage he was about to undertake, but this the consul declined to furnish, and informed him at the same time that Manzanillo was blockaded, and that the contemplated venture would be at his own risk.

Nevertheless, the consul agreed to write the Admiral, and did write him June 23, that Messa offered to give certain information that might be valuable, and that he proposed to be off Cape Cruz on June 30, when he could be picked up there and taken to the Admiral if desired; but the consul said: "You quite understand that in dealing with those people, one is always more or less liable to imposition. I therefore make no recommendation of Messa to you." There was nothing to show that the voyage was undertaken on the strength of this letter or that it in any way contributed to the capture, nor that the Admiral intended to avail himself of the suggestion in regard to Messa.

The claimant asserted and the consul denied that protection to the voyage was extended by the latter. But we do not go at length into this matter because we think that no engagement with the United States nor any particular service to the United States was made out in that connection, and so far as appears the vessel was captured in the ordinary course of cruising duty at a time and under circumstances when her liability was not to be denied. Moreover, a United States

consul has no authority by virtue of his official station to grant any license or permit the exemption of a vessel of an enemy from capture and confiscation. This was so held by Judge Mc Caleb in *Rogers* v. *The Amado*, Newberry, 400, in which he quotes the language of Sir William Scott in *The Hope*, 1 Dodson, 226, 229: "To exempt the property of enemies from the effect of hostilities, is a very high act of sovereign authority; if at any time delegated to persons in a subordinate situation, it must be exercised either by those who have a special commission granted to them for the particular business, and who, in legal language, are termed *mandatories*, or by persons in whom such a power is vested in virtue of any official situation to which it may be considered incidental. It is quite clear that no consul in any country, particularly in an enemy's country, is vested with any such power in virtue of his station. '*Ei rei non præponitur;*' and therefore his acts relating to it are not binding."

In *The Joseph*, 8 Cranch, 451, the vessel was condemned for trading with the enemy, and it was held that she was not excused by the necessity of obtaining funds to pay the expenses of the ship, nor by the opinion of an American minister expressed to the master, that by undertaking the voyage he would violate no law of the United States. The court said that these considerations, "if founded in truth, present a case of peculiar hardship, yet they afford no legal excuse which it is competent to this court to admit as the basis of its decision."

This is equally true of the case before us, for even if the circumstances may have justified liberal treatment, that cannot be permitted to influence our decision. It belongs to another department of the Government to extend such amelioration as appears to be demanded in particular instances.

Neither the case of *Les Cinq Frères*, 4 Lebau's Nouveau Code des Prises, 63, nor that of *The Maria*, 6 C. Rob. 201, cited by counsel, is in point. In the former, the Committee of Public Safety in the year three of the French calendar of the Revolution decreed the condemnation of Les Cinq Frères as an enemy's vessel, and of her cargo although belonging to Frenchmen, but further decreed restitution of the cargo or its

value, as matter of grace, in consideration of services rendered by the claimants in furnishing provisions to the Republic, adding that this should not be drawn into a precedent. The latter simply involved the interpretation of an indulgence specifically granted by the British government.

Thus far we have proceeded on the assumption that the transfer of the Benito Estenger was merely colorable, and this, if so, furnished in itself ground for condemnation. A brief examination of the evidence, in the light of well-settled principles, will show that the assumption is correct.

Messa's story of the transfer was that the steamer had been owned by Gallego, Messa and Company, and then by himself; that he was compelled to sell in order to get money to live on; that he made the sale for $40,000, for which, or a large amount of which, credit was given on an indebtedness of Messa to Beattie and Company, and that he was employed by Beattie to go on the vessel as his representative and business manager.

It appeared that Beattie applied to the customs and shipping office in Jamaica for a British register, lodged with him the bill of sale, and made a declaration of ownership before him as registrar of shipping, which documents were filed on June 9 and 14 respectively, and were in conformity with the requirements of British law. The depositions of the ship broker and his employés put the price at nine thousand pounds, and showed their belief that the sale was *bona fide*, founded on what passed between Messa and Beattie. They did not know what arrangements were made for the payment of the price or how or in what shape the purchase money was paid. The accountant stated that after the sale Beattie went on board and took possession of the vessel, and informed the officers in charge that he had become the owner, gave orders regarding her, and informed witness that he had given Messa the position as supercargo.

There was considerable confusion on the point as to who was master of the vessel after the transfer. Perez testified that he was, and as master he interposed the claim on behalf of Beattie. He also swore that Mr. Beattie "informed him

that he could remain as master, but it would be necessary for him to put an English subject on board as first officer or second captain, in conformity with the British law." Cole, a British subject, asserted that he was master, and Beattie stated that he appointed him such with Perez as mate and pilot, while Messa said that Perez was master and that he, Messa, was supercargo. Perez had been the captain of the ship and remained on her, and conceding that Cole was placed on board in the capacity of captain, the inference is not unreasonable that this was for appearances only.

Beattie testified that he was a member of the firm of Beattie and Company, composed of himself and his brothers, all British subjects, and interested in lands, sugar estates, mines and forests in the district of Manzanillo; that he had resided there for some years, returning to his parents' home in England for several months at a time; that he concluded the purchase of the Benito Estenger from Messa on June 9, 1898; that she left Jamaica on her last voyage on June 23, bound for Manzanillo, and chartered by Flouriache, a Cuban merchant, carrying a cargo of food stuffs sent for the purpose of trade; that he bought the vessel for nine thousand pounds; but he declined to state of what the payment or payments of the purchase money consisted, although saying that the sale was *bona fide*.

The consul testified that claimant, in conversation, while insisting that the transfer was absolute, admitted that it was effected for the purpose of protecting the vessel.

In short, the statements as to price were conflicting; the reason assigned for the sale was to get money to live on, and yet apparently no money passed, and Messa said that he received credit for a large part of the consideration on indebtedness to claimant's firm; claimant himself refused to describe the payment or payments; the Spanish master and crew remained in charge; Messa went on the voyage as supercargo; the vessel continued in trade, which, in this instance at least, appeared to be plainly trade with the enemy; and, finally, it is said by claimant's counsel in his printed brief: "It will not be contended upon this appeal that all the interest of Mr.

Messa in the Benito Estenger ceased on June 9, 1898. The transfer was obviously made to protect the steamer as neutral property from Spanish seizure. That Mr. Messa, however, still retained a beneficial interest after this sale and transfer of flags, and continued to act for the vessel as supercargo, has not been disputed."

The attempt to break the force of this admission by the contention that the change of flag was justifiable as made to avoid capture by the Spanish is no more than a reiteration of the argument that Messa was a Cuban rebel, and his vessel a Cuban vessel, which, as has been seen, we have been unable to concur in. If the transfer were invalid, she belonged to a Spanish subject, she was engaged in an illegal venture, and her owner cannot plead his fear of Spanish aggression.

Transfers of vessels *flagrante bello* were originally held invalid, but the rule has been modified, and is thus given by Mr. Hall, who, after stating that in France "their sale is forbidden, and they are declared to be prize in all cases in which they have been transferred to neutrals after the buyers could have knowledge of the outbreak of the war;" says: "In England and the United States, on the contrary, the right to purchase vessels is in principle admitted, they being in themselves legitimate objects of trade as fully as any other kind of merchandise, but the opportunities of fraud being great, the circumstances attending a sale are severely scrutinized, and the transfer is not held to be good if it is subjected to any condition or even tacit understanding by which the vendor keeps an interest in the vessel or its profits, a control over it, a power of revocation, or a right to its restoration at the conclusion of the war." International Law, (4th ed.) 525. And to the same effect is Mr. Justice Story in his Notes on the Principles and Practice of Prize Courts, (Pratt's ed.) 63; 2 Wheat. App. 30: "In respect to the transfers of enemies' ships during the war, it is certain that purchases of them by neutrals are not, in general, illegal; but such purchases are liable to great suspicion; and if good proof be not given of their validity by a bill of sale and payment of a reasonable consideration, it will materially impair the validity of a neutral

claim; . . . and if after such transfer the ship be employed habitually in the enemy's trade, or under the management of a hostile proprietor, the sale will be deemed merely colorable and collusive. . . . Anything tending to continue the interest of the enemy in the ship vitiates a contract of this description altogether."

*The Sechs Geschwistern*, 4 C. Rob. 100, is cited, in which Sir William Scott said: "This is the case of a ship, asserted to have been purchased of the enemy; a liberty which this country has not denied to neutral merchants, though by the regulation of France, it is entirely forbidden. The rule which this country has been content to apply is, that property so transferred, must be *bona fide* and absolutely transferred; that there must be a sale divesting the enemy of all further interest in it; and that anything tending to continue his interest, vitiates a contract of this description altogether."

In *The Jemmy*, 4 C. Rob. 31, the same eminent jurist observed: "This case has been admitted to farther proof, owing entirely to the suppression of a circumstance, which if the court had known, it would not have permitted farther proof to have been introduced; namely, that the ship has been left in the trade, and under the management of her former owner. Wherever that fact appears, the court will hold it to be conclusive, because, from the *evidentia rei*, the strongest presumption necessarily arises, that it is merely a covered and pretended transfer. The presumption is so strong, that scarcely any proof can avail against it. It is a rule which the court finds itself under the absolute necessity of maintaining. If the enemy could be permitted to make a transfer of the ship, and yet retain the management of it, as a neutral vessel, it would be impossible for the court to protect itself against frauds."

And in *The Omnibus*, 6 C. Rob. 71, he said: "The court has often had occasion to observe, that where a ship, asserted to have been transferred, is continued under the former agency and in the former habits of trade, not all the swearing in the world will convince it that it is a genuine transaction."

The rule was stated by Judge Cadwalader of the Eastern

District of Pennsylvania thus: "The rule of decision in some countries has been that, as to a vessel, no change of ownership during hostilities can be regarded in a prize court. In the United States, as in England, the strictness of this rule is not observed. But no such change of property is recognized where the disposition and control of a vessel continue in the former agent of her former hostile proprietors; more especially when, as in this case, he is a person whose relations of residence are hostile." *The Island Belle*, 13 Fed. Cases, 168.

So in *The Baltica*, Spinks Prize Cases, 264, several vessels had been sold by a father, an enemy, to his son, a neutral, immediately before the war, and only paid for in part, the remainder to be paid out of the future earnings thereof, and the Baltica, which was one of them, was condemned on the ground of a continuance of the enemy's interest.

In *The Soglasie*, Spinks Prize Cases, 104, Dr. Lushington held the *onus probandi* to be upon the claimant, and made these observations: "With regard to documents of a formal nature, though when well authenticated they are to be duly appreciated, it does not follow that they are always of the greatest weight, because we know, without attributing blame to the authorities under which they issue, they are instruments often procured with extraordinary facility. What the court especially desires is, that testimony which bears less the appearance of formality, — evidence natural to the transaction, but which often carries with it a proof of its own genuineness; the court looks for that correspondence and other evidence which naturally attends the transaction, accompanies it, or follows it, and which, when it bears upon the face of it the aspect of sincerity, will always receive its due weight."

In *The Ernst Merck*, Spinks Prize Cases, 98, the sale was to neutrals of Mecklenburg shortly before the breaking out of war, and it was ruled that the onus of giving satisfactory proof of the sale was on the claimant, and without it the court could not restore even though it was not called on to pronounce affirmatively that the transfer was fictitious and fraudulent. In that case the vessel was condemned partly because of absence of proof of payment, Dr. Lushington saying: "We

all know that one of the most important matters to be established by a claimant is undoubted proof of payment."

To the point that the burden of proof was on the claimant see also *The Jenny*, 5 Wall. 183; *The Amiable Isabella*, 6 Wheat. 1; *The Lilla*, 2 Cliff. 169; Story's Prize Courts, 26.

We think that the requirements of the law of prize were not satisfied by the proofs in regard to this transfer, and on all the evidence are of opinion that the court below was right in the conclusion at which it arrived.

*Decree affirmed.*

MR. JUSTICE SHIRAS, MR. JUSTICE WHITE and MR. JUSTICE PECKHAM dissented.